[redacted]

(25,575)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 745.

NORTH PACIFIC STEAMSHIP COMPANY, APPELLANT,

vs.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 25, 1917.

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1 UNITED STATES OF AMERICA:

District Court of the United States, Northern District of California.

Clerk's Office.

No. 15256.

HALL BROTHERS, etc., Libelant,

vs.

NORTH PACIFIC, etc., Respondent.

Præcipe.

To the Clerk of said Court:

SIR: Please issue and forward to the clerk of the Supreme Court of the United States, record on appeal in the above entitled suit and include therein the following:—

Libel of Hall Brothers, etc., Co., libelant.
Amended Libel of "
Answer of North Pacific etc. to amended libel.
Reporter's transcript.
Decree.
Substitution of proctors.
Petition to arrest and vacate Decree.
Affidavit on petition to arrest, etc., Decree.
Notice of hearing "
Order that exhibit be filed.
Order denying petition to arrest etc. decree.
Petition for leave to appeal.
Order allowing appeal and setting forth questions.
Assignment of errors.
Bond on appeal staying execution.
Citation on appeal.
2 Notice of appeal.
March 16th 1916.

MARCEL E. CERF,
C. H. SOOY,
Proctors for Respondent.

(Endorsed:) Filed Apr. 6, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

3 In the United States District Court for the Northern District of California, First Division.

(No. 15256.)

HALL BROTHERS MARINE RAILWAY & SHIPBUILDING CO. (a Corporation), Libelant,
vs.
NORTH PACIFIC STEAMSHIP COMPANY (a Corporation), Respondent.

Libel.

To the Honorable John J. de Haven, Judge of the United States District Court for the Northern District of California:

The libel of Hall Brothers Marine Railway & Shipbuilding Co., a corporation, against the North Pacific Steamship Company, a corporation, in a cause of contract, civil and maritime, alleges as follows:

I.

That libelant is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the state of California, and having its office and principal place of business in the city and county of San Francisco, in said state, and its shipbuilding plant at Winslow, state of Washington.

II.

That respondent is and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the state of California and having its principal place of business in the city and county of San Francisco, in said state.

4 III.

That said respondent is now, and at all of the times hereinafter mentioned was, the owner of the American steamer "Yucatan" of Port Townsend, Washington.

IV.

That heretofore, to wit, in the month of May, 1911, the said American steamer "Yucatan" then and there lying in the harbor of Winslow, state of Washington, stood in need of certain repairs and supplies to enable her to perform her voyages upon the Pacific Ocean and elsewhere, and the libelant herein on the 19th day of May, 1911, entered into a contract with the respondent herein, to repair said American steamer, a copy of which said contract is hereto attached, and marked "Exhibit A" and made a part hereof.

V.

That said libelant has duly performed all of the covenants, stipulations and conditions of said agreement on its part to be performed.

VI.

That in carrying out said contract to repair said steamer, libelant herein charged against the respondent herein in accordance with said agreement the sum of Twenty-nine thousand, four hundred eleven and 25-100 dollars ($29,411.25), which was a reasonable and proper charge for the services performed under said contract and for the materials furnished and labor performed in pursuance thereof for said steamer; that the said services rendered, materials furnished and labor done upon the said steamer were necessary and proper for the purpose of repairing, equipping and furnishing said steamer.

VII.

That respondent promised to pay libelant for said services rendered, work and labor done and materials used upon said steamer in accordance with the stipulations therefor set out in said agreement marked "Exhibit A". That though often requested, no part of said sum of $29,411.25 has been so paid, save and except the sum of Twenty-six thousand, eight hundred seventy-seven and 80-100 dollars ($26,877.80); that the balance of said sum, to wit, the sum of Two thousand, five hundred thirty-three and 45-100 dollars ($2,533.45), and every part thereof, is now due, owing and unpaid.

VIII.

That said respondent is a corporation doing business in the state of California and within the jurisdiction of this Honorable Court.

IX.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

And for a second and separate cause of libel, libelant alleges:

I.

That libelant hereby specifically refers to paragraphs numbered I, II, III, VIII and IX of the first cause of libel herein and hereby makes each and every of the allegations in said paragraphs contained a part of this second cause of libel as if said allegations were here set out in full and at length.

II.

That heretofore, to wit, between the 19th day of May, 1911 and the 21st day of August, 1911, at Winslow, state of Washington, the respondent above named became and was indebted to the libelant in the sum of $29,411.25, upon an open book account
6 and upon a mutual, open and current account between libelant and said respondent for goods and supplies sold and delivered to, and work and labor performed and services rendered for respondent by libelant at said respondent's request.

III.

That though often requested, no part of said sum of $29,411.25 so due from said respondent to said libelant as aforesaid, save and except the sum of $26,877.80 has been paid, and that the balance of said first mentioned sum, to wit, the sum of $2,533.45, and every part thereof, is now due and wholly unpaid.

And for a third and separate cause of libel against said respondent, libelant alleges:

I.

That libelant hereby specifically refers to paragraphs numbered I, II, III, VIII and IX of the first cause of libel herein and hereby makes each and every of the allegations in said paragraphs contained a part of this third cause of libel as if said allegations were here set out in full and at length.

II.

That at the time said repairs on said steamer were being made by libelant as aforesaid, libelant, for and on account of respondent, paid a premium for insurance on said vessel at the request of said respondent, in the sum of One hundred Sixty-seven and 75-100 dollars ($167.75), which said sum has not been paid by said respondent to said libelant, and the whole thereof is now due and unpaid.

Wherefore libelant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said North Pacific Steamship Company, owners as aforesaid, and that they may
7 be required to answer, on oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the amount due as aforesaid, with interest and costs; and that the libelant may have such other and further relief as in law and justice it is entitled to receive.

CHICKERING & GREGORY,
Attorneys for Libelant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Geo. E. Billings being first duly sworn deposes and says: That he is an officer, to wit, the President of Hall Brothers Marine Railway & Shipbuilding Co., libelant in the above entitled libel; that he has read the foregoing libel and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

GEO. E. BILLINGS.

Subscribed and sworn to this 15th day of May, 1912.

[SEAL.] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California.

8 EXHIBIT A.

May 19th, 1911.

North Pacific Steamship Company.
Mr. C. P. Doe, President.

Steamship "Yucatan."

DEAR SIR: Responsive to your personal request of this a. m. for our terms for making repairs to the above vessel, we beg to submit the following:—

We will agree to haul the vessel out on our marine railway with the use of same for 24 hours for $705.00.

For six days lay days immediately following hauling out we will make a lay day charge for each day of 24 hours—per day—$352.50.

For each working day after the expiration of seven days we will allow a lay day rate of—per day—$302.50.

Above rates to not apply to Sundays or holidays unless work is carried on upon the vessel.

Above rates contemplate allowing work to be carried on upon the vessel the usual working day 8 hours out of each 24 hours and in case you desire to work overtime, the same lay day rates will apply upon such overtime worked upon the vessel as a new day, and must be paid for pro rata according to such overtime in which work is carried on.

Dockage to be paid for in full at the end of each week.

For vessel lying along side our docks for repairs no charge will be made.

For fresh water pumped on board, our price will be fifty cents per one thousand gallons.

For running air compressors where two or more lines of hose are used, our charge will be—per hour—$2.50.

If but one line of hose is used, our charge will be—per hour—$1.00.

Hammers, riveters, drills or boring machines our charge will be sixty cents per hour for each tool while in use which covers our supplying necessary drills, chisels, caulking tools, augers, etc. commonly used with these machines.

All labor of sharpening said tools, however, to be paid for by you. For electric lights in number as may be needed to properly carry on the work, our charge will be—per hour—$1.50.

9 For all necessary labor of all classes used in repairing the vessel and furnished by us, we agree to supply same at the actual rate of wages paid each man plus fifteeen (15) per cent additional, payable Monday of each week. We shall require that you have a time-keeper to check up the time of labor and machines used with our time-keeper each day in order that no misunderstanding in this regard may occur.

We will agree to supply the use of lathes, drill presses, punch shears, shaper and steam hammer at sixty cents per hour each covering time same is in use. For power or hand hacksaw no charge will be made, but you will be required to pay for such blades as may be used in doing your work.

We will supply all necessary material at invoice price and cost of freight to our plant plus ten (10) per cent additional, all bills for same to be paid for as soon as delivered at our yard and our invoice is rendered for same.

For use of blacksmith forge including use of forge tools other than steam hammer and covering necessary coal for fire, our charge will be—per hr.—80 cents.

For flange fire—per hr.—2.50.

For special fire for heavy forgings such as stem or sternpost—3.50 per hr.

We will agree to deliver the vessel from where she now ties at Seattle to our plant for the sum of —— payable when first installment for labor is payable as above stipulated.

Hall Brothers Marine Railway & Shipbuilding Company shall not be required to insure said vessel against fire during the period of time said repairs are in progress, but such insurance owners desires to carry shall be procured by owners at their own expense.

If overtime work is done upon the vessel requiring the operation of our power plant the wages of engineer to operate same is to be chargeable to your account upon the same basis as other labor as above.

For use of our gasoline tug and scow for handling materials for the vessel, our charge will be $2.50 per hour for tug which covers crew to operate same also.

For 30-ton scow—per day—$3.00.

Respectfully yours,

HALL BROTHERS MARINE RAILWAY & SHIPB'LD'G COMPANY,

(Signed) By JOHN L. HUBBARD, *General Manager.*

I hereby accept the above—

NORTH PACIFIC STEAMSHIP COMPANY,

(Signed) By CHAS. P. DOE, *President.*

10 (Endorsed:) Filed May 15, 1912. Jas. P. Brown, Clerk, by M. T. Scott, Deputy Clerk.

11 In the United States District Court for the Northern District of California, First Division.

(No. 15256.)

HALL BROTHERS MARINE RAILWAY & SHIPBUILDING CO. (a Corporation), Libelant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY (a Corporation), Respondent.

(Amended) Libel.

To the Honorable John J. de Haven, Judge of the United States District Court for the Northern District of California:

The amended libel of Hall Brothers Marine Railway & Shipbuilding Co., a corporation, against the North Pacific Steamship Company, a corporation, in a cause of contract, civil and maritime, alleges as follows:

I.

That libelant is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the state of California, and having its office and principal place of business in the city and county of San Francisco, in said state, and its shipbuilding plant at Winslow, state of Washington.

II.

That respondent is and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the state of California and having its principal place of business in the city and county of San Francisco, in said state.

III.

12 That said respondent is now, and at all of the times hereinafter mentioned was, the owner of the American steamer "Yucatan" of Port Townsend, Washington.

IV.

That heretofore, to wit, in the month of May, 1911, the said American steamer "Yucatan" then and there lying in the harbor of Winslow, state of Washington, stood in need of certain repairs and supplies to enable her to perform her voyages upon the Pacific Ocean and elsewhere, and the libelant herein on the 19th day of May, 1911, entered into a contract with the respondent herein, to repair said American steamer, a copy of which contract is hereto attached, marked "Exhibit A" and made a part hereof.

V.

That said libelant has duly performed all of the covenants, stipulation- and conditions of said agreement on its part to be performed

VI.

That in carrying out said contract to repair said steamer, libelant herein charged against the respondent herein in accordance with said agreement the sum of Twenty-nine thousand, four hundred eleven and 25/100 dollars ($29,411.25), which was a reasonable and proper charge for the services performed under said contract and for the materials furnished and labor performed in pursuance thereof for said steamer; that the said services rendered, material furnished and labor done upon said steamer were necessary and proper for the purpose of repairing, equipping and furnishing said steamer.

That a schedule showing the kind, character and amount of said work, labor and services, and supplies, so performed and furnished for said vessel and said respondent, is hereto attached, marked Exhibit "B" and made a part hereof.

13 VII.

That respondent promised to pay libelant for said services rendered, work and labor done and materials used upon said steamer in accordance with the stipulations therefor set out in said agreement marked Exhibit "A." That though often requested, no part of said sum of $29,411.25 has been so paid, save and except the sum of Twenty-six thousand, eight hundred seventy-seven and 80/100 dollars ($26,877.80); that the balance of said sum, to wit, the sum of Two thousand, five hundred thirty-three and 45/100 dollars ($2,533.45), and every part thereof, is now due, owing and unpaid

VIII.

That said respondent is a corporation doing business in the state of California and within the jurisdiction of this Honorable Court.

IX.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore libelant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the North Pacific Steamship Company, owners as aforesaid, and that they may be required to answer, on oath, all and singular the matters aforesaid, and that this honorable Court would be pleased to decree the payment of the amount due as aforesaid, with interest and costs; and that the libelant may have such other and further relief as in law and justice it is entitled to receive.

CHICKERING & GREGORY,
Attorneys for Libelant.

14 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Geo. E. Billing being first duly sworn deposes and says: That he is an officer, to wit, the president of Hall Brothers Marine Railway & Shipbuilding Co., libelant in the above entitled amended libel; that he has read the foregoing amended libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

GEO. E. BILLINGS.

Subscribed and sworn to before me this 11th day of October, 1912.
[SEAL.] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California.

15 In the United States District Court for the Northern District of California, First Division.

HALL BROTHERS MARINE RAILWAY & SHIPBUILDING CO. (a Corporation), Libelant,
vs.
NORTH PACIFIC STEAMSHIP COMPANY (a Corporation), Respondent.

Interrogatories Propounded to the Respondent and which It is Hereby Required to Answer under Oath.

First Interrogatory.

State whether or not you have in your possession the original bills or copies thereof which constitute Exhibit "B" attached to this amended libel, and if you have not all of said bills please state which ones you have.

Second Interrogatory.

Please state which of said bills were approved by you or your representative.

Third Interrogatory.

There is written on each of said bills the words "Approved—North Pacific Steamship Company, by —— —— Supt. Engineer." Please state which of said bills are or were so approved, and by whom.

Fourth Interrogatory.

Please designate which of said bills you have in your possession and which ones are marked "Approved," and by whom, giving a statement of the remarks made in approving the bill, if any.

16 EXHIBIT A.

May 19th, 1911.

North Pacific Steamship Company.
Mr. C. P. Doe, President.

Steamship "Yucatan."

DEAR SIR: Responsive to your personal request of this a. m. for our terms for making repairs to the above vessel, we beg to submit the following:—

We will agree to haul the vessel out on our marine railway with the use of same for 24 hours for $705.00.

For six days lay days immediately following hauling out we will make a lay day charge for each day of 24 hours—per day —352.50.

For each working day after the expiration of seven days we will allow a lay day rate of—per day—302.50.

Above rates to not apply to Sundays or holidays unless work is carried on upon the vessel.

Above rates contemplate allowing work to be carried on upon the vessel the usual working day 8 hours out of each 24 hours and in case you desire to work overtime, the same lay day rates will apply upon such overtime worked upon the vessel as a new day, and must be paid for pro rata according to such overtime in which work is carried on.

Dockage to be paid for in full at the end of each week.

For vessel lying along side *out* docks for repairs no charge will be made.

For fresh water pumped on board, our price will be fifty cents per one thousand gallons.

For running air compressors where two or more lines of hose are used, our charge will be—per hour—2.50.

If but one line of hose is used, our charge will be—per hour—1.00

Hammers, riveters, drills or boring machines our charge will be

sixty cents per hour for each tool while in use which covers our supplying necessary drills, chisels, caulking tools, augers, etc., commonly used with these machines.

All labor of sharpening said tools, however, to be paid for by you. For electric lights in number as may be needed to properly carry on the work, our charge will be—per hour—1.50.

For all necessary labor of all classes used in repairing the vessel and furnished by us, we agree to supply same at the actual rate of wages paid each man plus fifteen (15) per cent additional, payable Monday of each week. We shall require that you have a time-keeper to check up the time of labor and machines used with our time-keeper each day in order that no misunderstanding in this regard may occur.

17 We will agree to supply the use of lathes, drill presses, punch shears, shaper and steam hammer at sixty cents per hour each covering time same is in use. For power or hand hack-saw no charge will be made, but you will be required to pay for such blades as may be used in doing your work.

We will supply all necessary material at invoice price and cost of freight to our plant plus ten (10) per cent additional, all bills for same to be paid for as soon as delivered at our yard and our invoice is rendered for same.

For use of blacksmith force including use of forge tools other than steam hammer and covering necessary coal for fire, our charge will be—per hr.—80 cents .

For flange fire—per hr.—2.50.

For special fire for heavy forgings such as stem or sternpost—3.50 per hr.

We will agree to deliver the vessel from where she now ties at Seattle to our plant for the sum of — payable when first installment for labor is payable as above stipulated.

Hall Brothers Marine Railway & Shipbuilding Company shall not be required to insure said vessel against fire during the period of time said repairs are in progress, but such insurance owners desires to carry shall be procured by owners at their own expense.

If overtime work is done upon the vessel requiring the operation of our power plant the wages of engineer to operate same is to be chargeable to your account upon the same basis as other labor as above.

For use of our gasoline tug and scow for handling materials for the vessel, our charge will be $2.50 per hour for tug which covers crew to operate same also.

For 30-ton scow—per day—$3.00.

Respectfully yours,

HALL BROTHERS MARINE RAILWAY & SHIPBUILDING COMPANY,

(Signed) By JOHN L. HUBBARD, *General Manager.*

I hereby accept the above.

NORTH PACIFIC STEAMSHIP COMPANY,

(Signed) By CHAS. P. DOE, *President.*

"EXHIBIT B."

Hall Brothers Marine Railway & Ship Building Co.

(Eagle Harbor.)

Capacity of Marine Railway 4,000 Tons Dead Weight.

Builders of Every Description of Wooden Vessels.
Special Facilities for Docking and Repairing Wood and Iron Vessels.
San Francisco Office: 202 California St.
Seattle Office: Room 6, Colman Dock Bldg.
Long Distance Telephone.
Agreements contingent upon Strikes, Accidents or other Causes of Delay beyond our control.

WINSLOW, WASH., June 3rd, 1911.

Sold to Str. "Yucatan" & Owners.

#1126.

For miscellaneous labor and material supplies to June 3rd, 1911:

Labor:			
Carpenter foreman	48 hrs.	6.00	36.00
Carpenters	176 hrs.	4.50	99.00
Sparmaker foreman	30 hrs.	5.00	18.75
Sparmakers	76 hrs.	4.50	43.75
Labor foreman	16 hrs.	4.75	9.50
Laborers	126½ hrs.	2.50	39.54
Rigger foreman	3¼ hrs.	4.00	1.63

Riggers	3¼	hrs.	3.20	1.30	
Blacksmiths	32¼	hrs.	3.75	15.23	
Blacksmiths	3	hrs.	5.00	1.87	
Blacksmith helpers	35½	hrs.	2.50	11.10	
Machinists	82¾	hrs.	4.00	41.38	
Machine foreman	31	hrs.	6.00	23.25	
Engineer	36	hrs.	4.00	18.00	
Riveters	293	hrs.	4.00	146.50	
Holder on	212	hrs.	3.00	79.50	
Heaters	120	hrs.	2.75	41.25	
Boys	92	hrs.	1.00	11.50	
Foreman (Kelly)	8	hrs.	8.00	8.00	
Foreman (Rodgers)	36	hrs.	6.00	27.00	
Helpers	80	hrs.	2.25	22.50	
Helpers	40	hrs.	2.50	12.50	
Ship fitters	77	hrs.	4.00	38.50	
					746.55
Fifteen percent of cost of labor					111.98
19 Use of Equipment:					
Blacksmith forge with coal	35½	hrs.	.80	28.40	
Use of air tools	40	hrs.	.60	24.00	
Air compressor	46½	hrs.	2.50	116.25	
Dynamo	46	hrs.	1.50	69.00	
Use of machines	71¾	hrs.	.60	43.05	
Tug "Klatawa"	8½	hrs.	2.50	21.25	
Tug crew	19	hrs.	2.50	5.94	
Scow H. B. #1	2	days	3.00	6.00	
Scow hire (half charge)	..		....	2.00	
					315.89

"EXHIBIT B."—Continued.

Merchandise Furnished:

452	½ x 2½ lag screws	19.00		
85	⅝ x 4 " "	6.80		
		25.80	75%	6.45
400	⅝ x 10 car. bolts	41.20	65%	14.42
150	¾ x 17½ mch. bolts	34.05	65%	19.67
400	⅝ x 3 " "	22.16		
150	⅝ x 5½ car. bolts	10.86	65%	3.80
2	plates ½ x 96 x 194 flange 5595 lbs.	.....	2.65	148.27
	Cartage			1.50
1	plate 20 x ½ 27′ 2″	1386#		
10	angles 5 x 3½ x ⅜ 40′	4160#		
5	angles 5 x 3 x ½ 60′	3840#		
		9386#	2.90	282.19
4	sheets flange steel 5/16 — 60 x 96	2158#		
4	sheets tank steel 5/16 — 60 x 120	2663#		
1	" ½ — 96 x 175	2450#		
		7271#	2.55	185.41
	Cartage			2.50
1	sheet tank steel 5/16 — 60 x 120	638#		
1	" 5/16 — 60 x 96	570#		
2	" 5/16 — 60 x 144	1625#		

1 "	5/16 — 48 x 96	436#		
		3269#	2.55	83.36
Cartage				1.00
4 sheets tank steel	½ — 96 x 196	11224#		
1 "	⅝ — 72 x 192	2553#		
1 "	½ — 48 x 120	810#		
2 "	⅝ — 48 x 144	2595#		
		17182#	2.55	438.14
Cartage and handling				6.00

20

10 x 12, 4/56, 2/48 S. 2 S. 1 E.	569.88
4½ x 12, 250 lin. ft. 24 — 30′	
4¼ x 16, 1/24	
4¼ x 10, 1/18	
4¼ x 24, 1/18	
2½ x 10, 260 lin. ft.	
3 x 5, 8/40, 10/38, 3/36, 3/34, 3/32	
4¼ x 5¼, 3/30, 3/32, 3/34, 4/36, 7/38, 8/40	
3¼ x 6½, 250 lin. ft.	
3¼ x 16, 2/18 select	
3¼ x 20, 1/24	
3¼ x 24, 1/24	
14000 ft. 2 x 4 T. & G.	
1000 ft. 1 x 4 T. & G.	
46 turned stanchions 3′ long, 4 x 4, 8/16, 1/20.	
400 lin. ft. moulding 4½ x 2″	
500 ft. 2 x 4	

"Exhibit B."—Continued.

Merchandise (continued):

For forging stem iron		183.00
100 lbs. blacksmith coal	15.00	.75
10 lbs. rd. iron	2.50	.25
11 lbs. 7/8" tool steel, oct.	.08	.88
10 lbs. com. wire nails	.03	.30
2 1/2 x 6 car. bolts	1.81	.04
28 5/8 x 1 1/2 car. bolts	2.08	.58
8 1/2 x 4 mach. bolts	1.96	.16
2 1/2 x 5 mach. bolts	2.17	.04
12 1/2 x 6 mach. bolts	2.38	.29
1 1/2 x 7 mach. bolts	2.58	.03
72 5/8 x 3 1/2 mach. bolts	2.68	1.93
6 5/8 x 7 mach. bolts	3.75	.22
24 5/8 x 6 mach. bolts	3.44	.83
2 5/8 x 5 galv. lag screws	3.01	.06
4 5/8 x 1 1/2 cap screws	3.60	.14
41 1/2 lbs. C. H. rivets	3.65	1.51
828 Bm. fir	20.00	16.56
1 1/4 lbs. sheet brass #27	.32	.40
2 spars for cargo derricks 60' x 16"	15.00	30.00
2 wire brushes	3.50	.58
20 lbs. fire clay	....	.15
8 sets wax candles	.12 3/4	1.02
2 3-cor. scrapers	....	.50
1 1/2 lbs. galv. tacks	....	.22
1/2 gal. linseed oil	....	.52

1	¾" pipe plug	....	.02	
3	lbs. galv. spikes	4.25	.13	
6	¼ x 2 brass cotter pins	4.05	.24	
12	3/16 x 1½ br. cotter pins	2.43	.29	
12	¼ x 1 " " "	2.18	.26	
Long distance phones			3.35	
				2,007.84
Ten percent of cost of material				200.78
Total				$3,383.04

2-17-13

Approved:
NORTH PACIFIC STEAMSHIP COMPANY,
By —— ——, *Supt. Engineer.*

"EXHIBIT B."—Continued.

21 *(Bill Head of Hall Brothers Marine Railway and Ship Building Co.)*

WINSLOW, WASH., June 12th, 1911.

Sold to Str. "Yucatan" & Owners.

#1138.

Labor:				
Carpenter foreman	36	hrs.	6.00	27.00
Carpenters	640	hrs.	4.50	360.00
Sparmaker foreman	12	hrs.	5.00	7.50
Sparmakers	24	hrs.	4.50	13.50
Labor foreman	9	hrs.	4.75	5.34
Laborers	125½	hrs.	2.50	39.22
Mill foreman	17	hrs.	4.00	8.50
Blacksmiths	59	hrs.	3.75	27.66
Blacksmiths	23½	hrs.	5.00	14.69
Blacksmith helpers	86	hrs.	2.50	26.90
Machinists	153½	hrs.	4.00	76.75
Machinist foreman	38	hrs.	6.00	28.50
Engineer	3	hrs.	4.00	1.50
Riveters	268	hrs.	4.00	134.00
Holder on	160	hrs.	3.00	60.00
Heaters	96	hrs.	2.75	33.00
Boys	160	hrs.	1.00	20.00
Plate worker foreman	48	hrs.	8.00	48.00
Helpers	141	hrs.	2.25	39.66

Helpers	88	hrs.	2.50	27.50	
Ship fitters	137	hrs.	4.00	68.50	
Chipper and caulker	48	hrs.	4.00	24.00	
					1091.72
Fifteen per cent of cost of labor					163.76
Use of Equipment:					
Use of forge with coal	87½	hrs.	.80	70.00	
Use of sawmill	15	hrs.	1.50	22.50	
Use of machines	126½	hrs.	.60	75.75	
Air compressor	48	hrs.	2.50	120.00	
Use of air tools	106	hrs.	.60	63.60	
Dynamo	48	hrs.	1.50	72.00	
Well's light	3	hrs.	.60	1.80	
Tug "Klatawa"	7½	hrs.	2.50	18.75	
Tug crew	8	hrs.	2.50 da.	2.50	
Scow H. B. #1	1 day		....	3.00	
					449.90
Merchandise:					
1 plate 5/16 x 35 x 175	1050#				
1 " 5/16" flange steel	805#				
	1855#		2.65	49.16	
1 plate ½ x 60 x 194 flange	1662#				
2 " ½ x 60 x 144	2486#				
	4148		2.65	109.92	

"Exhibit B."—Continued.

22

2 kegs $\frac{5}{8}$ x $1\frac{1}{4}$ C. H. rivets	200#	3.65	7.30
1 " $\frac{5}{8}$ x $1\frac{1}{2}$ " " "	100#	3.65	3.65
1 " $\frac{3}{4}$ x $1\frac{1}{4}$ " " "	100#	3.50	3.50
100 $\frac{5}{8}$ x 3 machine bolts	.....	....	2.22
100 $\frac{3}{4}$ x 3 " "	.....	....	3.04
Cutting and straightening 2 plates $\frac{1}{2}$ x 96 x 194	.....	....	13.75
2 angles 6 x 4 x $\frac{1}{2}$, 18 ft	583#		
1 plate $\frac{5}{8}$ x 12, 18 ft	459#		
	1042#	3.15	32.82
Bending stem iron	.....	....	41.50
2 angles $2\frac{1}{2}$ x $2\frac{1}{2}$ x $\frac{1}{4}$, 40 ft	328#	2.90	9.51
1 pc. Uv. bar $\frac{1}{4}$ x 12, 16 ft	163#	3.15	5.13
50 $\frac{5}{8}$ x $3\frac{1}{2}$ cge. bolts	.....	....	1.03
1000 ft. 4", 5" and 6" template stock	.....	....	21.00
68 lbs. 3/16" plate		2.55	1.73
20 lbs. #22 galv. iron		4.25	.85
60 lbs. #16 " "		4.10	2.46
330 lbs. mild steel		2.25	7.42
40 lbs. Norway iron		4.25	1.70
36 lbs. $1\frac{1}{2}$" rd. iron		2.25	.81
6 lbs. 1" rd. iron		2.25	.14
15 lbs. $\frac{3}{8}$ rd. iron		2.25	.34
605 lbs. $2\frac{1}{2}$ rd. iron		2.25	13.61
32 lbs. $1\frac{3}{4}$ rd. iron		2.25	.72
47 lbs. $\frac{3}{8}$" plate		2.55	1.20
		2.25	6.62

20 lbs.	2 x 2 angle bar	2.90	.58
22 lbs.	1½ x 1½ angle bar	2.90	.64
12 lbs.	¾" special tool steel	.08	.96
1 lb.	hex. brass rod	...	.28
4 pcs.	¼ x 2 br. cotters	4.50	.18
½ lb.	sheet brass	.29	.14
9½ lbs.	brass ring casting	.25	2.37
2 lbs.	½" br. rod	....	.56
61½ lbs.	rivets, C. H.	3.65	2.24
200 lbs.	⅝ x 1¼ C. H. rivets	3.65	7.30
145 lbs.	⅝ x 1½ " "	3.65	5.29
2	⅝ x 6 cge. bolts	2.08	.04
2	½ x 7 " "	3.30	.07
9	⅝ x 5 " "	2.77	.25
24	⅜ x 1½ mach. bolts	.64	.15
75	¾ x 1½ mach. bolts	2.88	2.16
25	¾ x 2 " "	2.88	.72
12	½ x 3 " "	1.29	.15
8	½ x 4 " "	1.46	.12
25	⅝ x 2 " "	2.08	.52
24	½ x 1¼ " "	1.20	.29
1	¾ x 4 " "	3.42	.03
2	¾ x 8 " "	4.90	.10
30	⅝ x 4 " "	2.49	.75
4	⅝ x 8½ " "	3.74	.15
3	⅝ x 5 " "	2.77	.08
1¼ lbs.	galv. tacks	.15	.19
2 lbs.	com. wire nails	.03	.06
17 lbs.	galv. cut nails	5.25	.89

"EXHIBIT B."—Continued.

29	lbs. galv. boat spikes	4.75	1.38	
2½	lbs. ⅝" tap nuts	7.25	.18	
43	lbs. blk. washers	.05½	2.37	
23	Merchandise (continued):			
7	lbs. cast iron ring	.05	.35	
7	lbs. galv. deck bolts	.08	.56	
520	lbs. blacksmith coal	15.00	3.90	
1½	lbs. red lead	.08	.12	
29	lbs. white lead	.09	2.61	
60	lbs. 1½" deck plugs	2.30	.14	
5	gals. Elaine oil	.27	1.35	
½	gal. boiled linseed oil	1.02	.51	
2	gals. hull black	1.20	2.40	
4	sets wax candles	.12¾	.51	
1	16" ½-rd. file		.51	
	Long distance telephones		2.65	
				387.93
	Ten per cent of cost of material			38.79
	Total			$2132.10

E. & *C.* E.

Approved:

NORTH PACIFIC STEAMSHIP COMPANY,

By —— ——, *Supt. Engineer.*

(*Bill Head of Hall Brothers Marine Railway and Shipbuilding Co.*)

WINSLOW, WASH., June 19, 1911.

Sold to Str. "Yucatan" & Owners.

#1143.

For miscellaneous labor and material furnished to June 17, 1911:

Dockage:					
Hauling (hauled 10:00 a. m. 6/17/11)				705.00	
⅛ lay day (8 p. m. to 9 p. m. 6/17/11)			352.50	44.06	
					749.06
Labor:					
Carpenter foreman	38	hrs.	6.00	28.50	
Carpenters	856	hrs.	4.50	481.50	
Sparmakers	23	hrs.	5.00	14.38	
Labor foreman	12	hrs.	4.75	7.13	
Laborers	117½	hrs.	2.50	36.72	
Rigger foreman	3½	hrs.	4.00	1.75	
Mill foreman	32	hrs.	4.00	16.00	
Blacksmiths	15	hrs.	3.75	7.03	
Blacksmiths	19	hrs.	5.00	11.88	
Blacksmith helpers	39½	hrs.	2.50	12.35	
Machinists	172	hrs.	4.00	86.00	
Machinist helpers	30	hrs.	2.50	9.38	
Machinist foreman	43	hrs.	6.00	32.25	
Engineer	6	hrs.	4.00	3.00	

"Exhibit B."—Continued.

Fireman	6	hrs.	2.50	1.87	
Electrician	26	hrs.	4.00	13.00	
Riveters	250	hrs.	4.00	130.00	
Holder on	218	hrs.	3.00	81.75	
Heaters	92	hrs.	2.75	31.63	
Boys	130	hrs.	1.00	16.25	
Ship-fitter foreman	51	hrs.	8.00	51.00	
Helpers	100	hrs.	2.25	28.13	
Helpers	104	hrs.	2.50	32.50	
Ship-fitters	145	hrs.	4.00	72.50	
Chipper and caulker	52	hrs.	4.00	26.00	
					1232.50
Fifteen per cent. of cost of labor					184.87
Use of Equipment:					
Use of sawmill	27	hrs.	1.50	40.50	
Use of forge with coal	34	hrs.	.80	27.20	
Use of small flange fire	21	hrs.	.80	16.60	
Use of machines	128½	hrs.	.60	77.10	
Air compressor	54	hrs.	2.50	135.00	
Use of air tools	176	hrs.	.60	105.60	
Dynamo	40	hrs.	1.50	60.00	
Use of Well's Light	8	hrs.	.60	4.80	
					466.80
25 Merchandise:					
200 ¾ x 1¼ C. H. rivets			3.50	7.00	
200 ¾ x 1½ " "			3.50	7.00	

100 ¾ x 1⅞ "	3.50	3.50
200 ⅝ x 1¼ "	3.65	7.30
200 ⅝ x 1½ "	3.65	7.30
100 ⅝ x 1⅞ "	3.65	3.65
200 5/7 x 1½ Mach. bolts	2.08	4.16
200 ⅝ x 2 " "	2.23	4.46
12 angles ¼ x 2 760#	2.70	20.52
2 brass castings, cast for you 74#	.25	18.50
200 5/16 x 5 galv. spikes	4.60	9.20
1796 Bm. fir	22.50	40.41
16 lbs. ⅜" boiler plate	3.25	52.00
292 lbs. flat black iron	2.50	7.30
67 lbs. mild steel	2.50	1.68
2 lbs. ¾" O. C. T. tool steel	.08	.18
27 lbs. 1½ x ¼ angle bar	2.90	.78
13 lbs. 2½ x 1¼ angle bar	2.90	.38
14 lbs. hex. brass rod	.28	3.92
5 lbs. bronze	.32	1.60
46½ lbs. cast brass	.25	11.62
4 ⅝ x 18 car bolts	6.28	.25
8 ⅝ x 15 " "	5.47	.44
6 ⅝ x 12 " "	4.66	.28
3 ⅝ x 10 " "	4.12	.12
8 ½ x 7 " "	1.99	.16
25 ½ x 11 " "	2.69	.67
50 ½ x 1½ " "	1.44	.72
2 ½ x 4 " "	1.96	.04
2 2 x 8 " " 32#	.15	4.80
55 ⅝ x 1½ " "	2.08	1.14
50 ⅝ x 2 " "	2.23	1.12

"Exhibit B."—Continued.

4	¾ x 5 " "	4.28	.17
50	⅜ x 1 " "	.96	.48
188	lbs. C. H. rivets	3.65	6.86
98	lbs. galv. boat spikes	4.50	4.41
6¼	lbs. com. wire spikes	.03	.19
13½	lbs. 1½" hex. tap nuts	7.25	.98
1	1" hex. tap nuts	6.95	.07
2	lbs. ⅞" "	7.25	.15
32	lbs. 2¼" "	8.20	2.62
1	Cargo Boom End Band	....	22.00
8	½ x 7 lag screws	2.30	.18
6	½ x 3 galv. lag screws	3.62	.22
5	sets wax candles @ 12¾¢	.12¾	.64
5	lbs. black tacks	.09	.45
10	lbs. galv. wire nails	4.25	.42
2½	lbs. galv. washers	.08	.20
5½	lbs. black washers	.05½	.30
½	gal. Hull black	1.20	.60
½	gal. boiled linseed oil	1.02	.51
1	½" bushing	1.60	.02
1	¼" "	....	.01
2	⅜" "	....	.02
22	1¼" deck plugs	2.05	.45
2	½" pipe plugs	....	.02
26	Merchandise (cont'd):		
145	lbs. Fire clay	.75	1.09

71½ lbs. ¼″ plate cover	.36	25.74	
1¾ lbs. red lead	.08	.14	
108 lbs. cement	2.75	2.97	
1 10″ round file	....	.15	
Long Distance phones	....	2.85	
			245.61
Ten Per cent. of cost of Material			24.56
Total			$2903.40

E. & O. E.

Approved:
NORTH PACIFIC STEAMSHIP CO.,
By —— ——, *Supt. Engineer.*

"Exhibit B."—Continued.

27 (*Bill Head of Hall Brothers Marine Railway and Ship Building Co.*)

Winslow, Wash., June 26th, 1911.

Sold to Str. "Yucatan" & Owners.

#1148.

Dockage:					
5⅞ lay days			342.50	2,070.94	
7⅞ lay days			302.50	2,382.19	
					4,453.13
Labor:					
Carpenter foreman	34	hrs.	6.00	25.50	
Carpenters	567	hrs.	4.50	318.94	
Sparmaker foreman	5	hrs.	5.00	3.13	
Labor foreman	35	hrs.	4.75	20.78	
Laborers	351	hrs.	2.50	109.69	
Mill foreman	4	hrs.	4.00	2.00	
Blacksmiths	42½	hrs.	3.75	19.92	
Blacksmiths	45½	hrs.	5.00	28.44	
Blacksmith helpers	95	hrs.	2.50	29.69	
Machinists	211½	hrs.	4.00	105.75	
Machinist helpers	101½	hrs.	2.50	31.72	
Machinist foreman	85	hrs.	6.00	63.75	
Caulkers	32	hrs.	5.00	20.00	

Engineer	100	hrs.	4.00	50.00	
Fireman	100	hrs.	2.50	31.25	
Riveters	1126	hrs.	4.00	563.00	
Holder on	588	hrs.	3.00	220.50	
Heaters	230	hrs.	2.75	79.08	
Boys	72	hrs.	1.00	9.00	
Ship-fitter foreman	74½	hrs.	8.00	74.50	
Helpers	1303	hrs.	2.50	407.19	
Ship fitters	432	hrs.	4.00	216.00	
Chipper and caulker	368	hrs.	4.00	184.00	
Air riveter	70	hrs.	5.00	43.75	
Riveter (subforeman)	52	hrs.	4.50	29.25	
Air holder-on	58	hrs.	3.50	25.38	
					2,712.19
Fifteen per cent. of cost of labor					406.83
Use of equipment:					
Use of sawmill	4	hrs.	1.50	6.00	
Use of forges	90	hrs.	.80	72.00	
Use of flange fire	32	hrs.	2.50	80.00	
Use of machines	194½	hrs.	.60	116.70	
Air compressor	110	hrs.	2.50	275.00	
Use of air tools	704	hrs.	.60	422.40	
Dynamo	108	hrs.	1.50	162.00	
Use of Well's Light	10	hrs.	.60	6.00	
					1,140.10
28 Use of Equipment (Continued):					
Steam supplied	5	days	5.00	25.00	
Tug "Klatawa"	8¾	hours	2.50	21.88	

"EXHIBIT B."—Continued.

Tug crew	8½ hours	2.50 da.	2.66	
Use of Scow H. B. #1	1 day	3.00	3.00	
				52.54
				1,192.64
Material:				
48 lbs. Norway iron			4.25	2.04
30 lbs. ¼" plate			2.50	.75
126 lbs. ⅜" plate			2.50	3.15
34 lbs. #14 iron			2.50	.85
28 lbs. #12 galv. iron			4.10	1.15
61 lbs. galv. rd. iron			4.25	2.59
112 lbs. blk. rd. iron			2.25	2.52
3 lbs. 1" rd. iron			2.25	.07
45 lbs. ⅜ x 3 iron			2.25	1.01
175 lbs. mild steel			2.25	3.94
8 lbs. cast iron			.04	.32
18 lbs. 1½" br. bar			.28	5.04
3 lbs. 1" br. bar			.28	.84
9 lbs. 2¾" br. bar			.28	2.52
¾ lb. 5/16" br. bar			.28	.21
1 pc. bronze 4 x 4" cast for you 17½ lbs			.30	5.18
1 pr. brasses cast for you			....	3.35
1 cast iron solid bushings 23 lbs			.03½	.80
1 cast iron blank flange 40 lbs			.03½	1.40
6 cast brass skylight hinges cast for you			....	26.30
3 sheets 16—30—96 blk. iron 150 lbs			3.15	4.73
1 pcs. 6# sheet lead 265 lbs			8.45	22.40

200	lbs. 7/8 x 2 1/8 C. H. rivets	3.50	7.00
200	lbs. 7/8 x 1 7/8 " "	3.50	7.00
485 3/4	lbs. assorted C. H. rivets	3.65	17.73
1392	lbs. blacksmith coal	15 ton	10.44
15 1/2	lbs. blk. washers	.05 1/2	.85
3	lbs. galv. washers	.08	.24
14 1/2	lbs. blk. cl. rings	.08	1.16
3	lbs. galv. cl. rings	.11	.33
923	Bm. fir	22.50	20.77
5	lbs. caulking cotton	.16	.80
10	lbs. oakum	.07	.70
45	lbs. boat pitch	.02 1/2	1.13
17	Bm. oak	.15	2.55
41	Bm. oak	.04	1.64
15	gals. Elaine oil	.27	4.05
31	sets wax candles	.12 3/4	3.95
1	roll ship felt	....	1.60
8 1/2	lbs. wire spikes	.03	.26
4	lbs. galv. cut nails	4.25	.17
22 1/2	lbs. galv. wire nails	4.25	.96
10	lbs. galv. boat spikes	4.50	.45
2	5/8 x 3 1/2 blk. lag screws	2.47	.05
14	5/8 x 4 lag (blk.) screws	2.65	.05
2	5/8 x 4 galv. lag screws	5.25	.11
16	3/4 x 4 blk. lag screws	3.50	.56
25	lbs. litharge	.08	2.00
29	Materials (continued):		
1	gal. glycerine	....	2.75
16	1/2" galv. ring bolts	.35	5.60

"EXHIBIT B."—Continued.

24	3/8 x 1 mach. bolts	.96	.23
1	1/2 x 4 " "	1.96	.02
5	5/8 x 6 mach. bolts galv	6.46	.32
3	5/8 x 3 " "	2.53	.08
323	3/4 x 2 " "	3.08	9.95
91	3/4 x 3 " "	3.48	3.17
12	3/4 x 4 " " galv	7.25	.87
6	3/4 x 5 " " "	8.02	.48
4	3/4 x 6 " "	4.68	.19
6	3/4 x 7 " "	5.08	.30
8	3/4 x 8 " "	5.48	.44
2	3/4 x 10 " " "	11.75	.23
4	3/4 x 12 " "	7.08	.28
1	3/4 x 14 " "	7.88	.08
2	3/4 x 15 " "	8.28	.17
26	5/8 x 11 car bolts	4.39	1.14
22	5/8 x 4 1/2 " "	2.63	.58
5	7/8 x 4 mach. bolts	5.60	.28
1	lb. 3/4" tap (hex.) nuts	7.25	.07
3 1/2	lbs. 1" hex. tap nuts	7.25	.25
2	lbs. 1 1/2" hex. tap nuts	....	.15
6	lbs. 1 3/8" hex. tap nuts	6.95	.42
3	lbs. 2" " " "	6.95	.21
6	pcs. 1" semi-fin. tap nuts	6.15	.37
2	pcs. 1/2" " " "	1.60	.03
12	3/4 x 3/4 patch bolts	6.00	.72
12	3/8 x 1 1/2 " "	3.75	.43
2 1/4	lbs. blk. template tacks	.08	.18

1 8″ rd. file	....	.10	
1 14″ half round file	....	.38	
6 ⅜ x 1¼ cap screws	1.53	.91	
8 ⅜ x ¾ " "	1.35	.11	
2 corn deck brooms	....	1.00	
4 18″ hammer handles	.15	.60	
6 ¾ x ½ bushings	.02	.12	
4 ½ "	1.60	.06	
1 2″ 45 deg. ell	....	.20	
1 2½″ reducer	....	.24	
3 1″ galv. screw shackles	.75	2.25	
30 ¾″ deck plugs	....	.05	
15 lbs. fire clay	.03¾	.11	
1 lb. pure rubber gum	....	.80	
3½ doz. 3½ x 24 brass screws	.60	2.10	
1/3 doz. 1¼ x 9 " "	.06	.02	
2/3 doz. 1¾ x 16 galv. "	.15	.10	
2 1½″ br. globe valves	2.35	4.70	
18½ lbs. challenge babbit- metal	.45	8.33	
½ lb. putty	....	.02	
Long distance telephones	....	1.25	
Telegrams, paid for you	....	.85	
			232.32
Ten per cent. cost of material			23.23
E. & O. E. Total			9,020.34

Approved:
NORTH PACIFIC STEAMSHIP COMPANY,
By —— ——, *Supt. Engineer.*

"EXHIBIT B."—Continued.

30 Hall Brothers Marine Railway and Shipbuilding Co.

(Eagle Harbor.)

Capacity of Marine Railway 4,000 Tons Dead Weight.

Builders of every description of wooden vessels.
Special facilities for docketing and repairing wood and iron vessels.

Credit Memorandum.

WINSLOW, WASH., 6/26/11.

Str. "Yucatan" & Owners:
We have this day credited your account as follows:

By Material Returned:		
(Billed in our invoice of 6/19/11, #1143) 71½ lbs. ¼" plate copper	.36	$25.74

(Heading "Credit Memorandum," as above.)

WINSLOW, WASH., July 21, 1911.

Str. Yucatan & Owners:
We have this day credited your account as follows:

By allowance made on use of chain tackles and air tools	$69.00

(Heading, "Credit Memorandum.")

WINSLOW, WASH., August 5th, 1911.

Str. "Yucatan" & Owners.

We have this day credited your account as follows:

Material Left at Completion of Repairs:

41	5/8 x 3 mach. bolts	2.53	1.04	
10	3/4 x 3 mach. bolts	3.48	.35	
20	5/8 x 3 car. bolts	2.21	.44	
75	5/8 x 10 car. bolts	4.12	3.09	
15	5/8 x 11 car. bolts	4.39	.66	
144	lbs. cone head rivets	3.65	5.26	
1	plate 1/2' x 5' x 16 — 1680#	2.50	42.00	
1	plate 5/8 x 3 x 16 — 1600#	2.50	40.00	
1	plate 1/2 x 4 x 10 — 800#	2.50	20.00	
1	pc. 3/8 x 3 1/2 angle bar — 136#	2.90	3.94	
4	angles 3 x 5 x 60', 2352#	2.90	68.21	
				184.99
a/c	drill charges			6.60
	Total Credit			$191.59

HALL BROTHERS MARINE RY. & SHIPB'LD'G CO.

"EXHIBIT B."—Continued.

32 (*Bill Head of Hall Brothers Marine Railway and Ship Building Co.*)

WINSLOW, WASH., June 26th, 191–.

Dockage Steamer "Yucatan."

Sunday	6/18/11	8 a. m. to 5 p. m. 8 hrs.		
Monday	6/19/11	7 a. m. to 5 p. m. 8 hrs.	4 p. m. to 7 a. m. 14 hrs.	
Tuesday	6/20/11	7 a. m. to 4 p. m. 8 hrs.	4 p. m. to 7 a. m. 14 hrs.	
Wednesday	6/21/11	8 a. m. to 5 p. m. 8 hrs.	5 p. m. to 6 a. m. 12 hrs.	
Thursday	6/22/11	8 a. m. to 5 p. m. 8 hrs.	5 p. m. to 6 a. m. 12 hrs.	
Friday	6/23/11	8 a. m. to 5 p. m. 8 hrs.	5 p. m. to 7 a. m. 2 hrs.	
Saturday	6/24/11	8 a. m. to 5 p. m. 8 hrs.		
		56 hrs.		54 hrs.
				56 hrs.
				100 hrs.

13¾ lay days, or

33 (*Bill Head of Hall Brothers Marine Railway and Ship Building Co.*)

WINSLOW, WASH., July 3rd, 1911.

#1150.

Sold to Str. "Yucatan" & Owners.

For Miscellaneous Labor and Material Supplied, June 25th to July 1st incl.:

Dockage:				
85/8 lay days			302.50	2,609.06
Labor:				
Carpenter foreman	20	hrs.	6.00	.15.00
Carpenters	330	hrs.	4.50	185.62
Sparmaker foreman	3	hrs.	5.00	1.88
Labor foreman	43	hrs.	4.75	25.53
Laborers	325½	hrs.	2.50	101.72
Mill foreman	5	hrs.	4.00	2.50
Mill men	2	hrs.	2.50	.63
Blacksmiths	99½	hrs.	3.75	46.64
Blacksmiths	22½	hrs.	5.00	14.06
Blacksmith helpers	125½	hrs.	2.50	39.22
Machinists	166	hrs.	4.00	83.00
Machinist helpers	47	hrs.	2.50	14.69
Machinist foreman	49	hrs.	6.00	36.75
Engineer	44	hrs.	4.00	22.00
Fireman	44	hrs.	2.50	13.75
Riveters	802	hrs.	4.00	401.00
Holder on	628	hrs.	3.00	235.00
Heaters	292	hrs.	2.75	100.38
Boys	138	hrs.	1.00	17.25
Ship-fitter foreman	71½	hrs.	8.00	71.50
Helpers	987	hrs.	2.50	308.44
Ship fitters	469	hrs.	4.00	234.50
Chipper and Caulker	204	hrs.	4.00	102.00
Air riveter	90	hrs.	5.00	56.25

"Exhibit B."—Continued.

Air holder on	90	hrs.	3.50	39.33	
Riveters	90	hrs.	4.50	50.63	
					2,219.82
Fifteen percent of cost of labor					332.97
Use of Equipment:					
Use of sawmill	5½	hrs.	1.50	8.25	
Use of flange fire	29	hrs.	2.50	72.50	
Use of forge with coal	122	hrs.	.80	97.60	
Use of machines	264½	hrs.	.60	158.70	
Air compressor	69	hrs.	2.50	172.50	
Use of air tools	499	hrs.	.60	299.40	
Dynamo	61	hrs.	1.50	91.50	
Well's light	14	hrs.	.60	8.40	
Tug "Klatawa"	14	hrs.	2.50	35.00	
Tug crew	31½	hrs.	2.50 da.	9.85	
5 ton chain blocks	5	days	5.00 da.	25.00	
3 ton chain blocks	3	days	2.00 da.	6.00	
					984.70
34 Material:					
146 lbs. rd. blk. iron			2.50	3.65	
335 lbs. mild steel			2.50	8.38	
23 lbs. ⅜ x 2½ iron			2.50	.68	
58 lbs. ⅜ x 3 "			2.50	1.44	
120 lbs. 1¼ x 3½ mild steel			2.50	3.00	
14 lbs. 1¼" tool steel			.08	1.12	

113 lbs. blk. iron		2.50	2.82
342 lbs. 3/16″ plate		2.65	9.06
23½ lbs. blk. washers		.05½	1.29
1222 lbs. C. H. rivets		3.50	42.77
2 x 12 rgh. mch. fir	448 Bm.	15.00	6.72
1 x 6 #1 mch. shiplap K. D.	200 "	19.50	3.90
2¾ x 3¼ 6/28 Mch. S. 4s	124 "	18.50	2.29
2 x 6 select S. 4 S. C. S.	500 "	20.50	10.25
2 x 6 3/30 select S. 4 S. 1 E.	90 "	20.00	1.80
3¾ x 12 21/30″ S. 4 S.	2263 "	21.50	48.65
1 x 4, select T. & G. K. D.	800 "	27.00	21.60
434 Bm. template stock	....	20.00	8.68
4 kegs ⅞ x 3 C. H. rivets	400#	3.50	14.00
3 kegs ¾ x 1¾ " "	300#	3.50	10.50
3 kegs ¾ x 2¼ " "	300#	3.50	10.50
10 kegs ⅞ x 3 " "	1000#	3.50	35.00
30 ⅞ x 2 patch bolts	....	.....	2.70
100 ⅝ x 3½ cge. bolts	....	.....	2.06
2 kegs ¾ x 2½ rivets	200#	3.50	7.00
1 keg ⅞ x 3½ "	100#	3.50	3.50
1 keg ⅞ x 3½ "	100#	3.50	3.50
1 plate ⅜″ x 16″ x 16′	326#	.03½	10.60
2 x 12 Mch. fir S. 1 S. 2 E.	1700 Bm.	16.50	28.05
4 ½ x 4 galv. cge. bolts		2.74	.11
6 ½ x 5½ " " "		3.24	.19
6 ½ x 6 " " "		3.41	.20
4 ½ x 3 cge. bolts		1.29	.05
3 ⅝ x 2½ cge. bolts		2.08	.06
4 ½ x 4½ " "		1.55	.06

"Exhibit B."—Continued.

20	5/8 x 4½ " "	2.63	.53
12	3/8 x 1½ mch. bolts	.96	.12
26	3/8 x 3½ " "	1.22	.32
1	3/8 x 4 " "	1.28	.01
65	½ x 1½ " "	1.44	.94
8	½ x 1 " "	1.44	.12
1	½ x 5 " "	2.17	.02
1	½ x 4 " "	1.96	.02
12	5/8 x 3 " "	2.53	.30
12	5/8 x 5 " "	3.14	.28
188	¾ x 2 " "	3.08	5.79
52	¾ x 2½ " "	3.28	1.71
80	¾ x 3 " "	3.48	2.78
66	¾ x 3½ " "	3.68	2.43
6	¾ x 4 " "	3.88	.23
1	¾ x 5 " "	4.28	.04
54	7/8 x 3 " "	5.04	2.72
51	7/8 x 7 " "	7.28	3.71
4	7/8 x 10 " "	8.96	.36
22	5/8 x 4 " "	2.84	.62
35			
50	lbs. fire clay	.00¾	.40
8	lbs. galv. wire nails	4.25	.34
3	lbs. com. wire nails	.03	.09
6	pcs. ½ x — galv. lag screws	4.16	.25
2¾	lbs. blk. template tacks	.09	.25
		18.75	2.81

15	1¼ x 1½ patch bolts	6.00	.96
16	¾ x 1¼ " "	9.00	.72
8	⅞ x 1¼ " "	15.75	3.78
24	1⅛ x 2 " "	3.60	.43
12	⅝ x 1½ cap screws	3.78	.23
6	⅝ x 1¾ cap screws	7.13	.07
1	1 x 2½ set screw	.18	.27
1½	doz. 2½ x 13 br. screws	.20	.27
1	1/3 doz. 3 x 20 br. screws	.40	.40
1	doz. 3 x 20 br. screws	.22	1.83
8½	doz. 2½ x 16 br. screws	.27	2.84
10½	lbs. brass portlight thunk screws	.28	2.73
9¾	lbs. hex. br. rod	.25	2.12
8½	lbs. cast brass	.23	8.74
38	lbs. Magnolia Babbitt metal	.35	11.20
32½	lbs. galv. ring bolts	7.25	.76
10½	lbs. ¾ hex. tap nuts	7.25	.36
5	lbs. ⅞ " " "	7.25	.33
4½	lbs. 1½ " " "	.08	3.48
43½	lbs. white lead	.07½	3.08
41	lbs. red lead	1.02	1.53
1½	gals. bld. linseed oil	....	2.25
300	lbs. cement	.22	.88
4	gals. engine oil	.35	1.75
5	gals. dogfish oil	....	1.60
1	roll ship felt	.02½	2.90
116	planking wedges	4.25	.09
2	lbs. galv. spikes	.08½	1.19
14	lbs. 2″ lead pipes		

"EXHIBIT B."—Continued.

8 lbs. 1/8" sheet lead	.09	.72	
18 1" deck plugs	....	.03	
6 lbs. putty	.03½	.21	
16 sets wax candles	.12¾	2.04	

"EXHIBIT B."—Continued.

1 pair 2¾" galv. row locks and sockets	....	.35	
2 lbs. cotton waste #1	.12	.24	
24 1⅜ deck plugs	....	.06	
18 ⅜ " "	....	.02	
8 ¾ " "	....	.01	
4 ½" ells	3.42	.14	
1 2" ell	18.00	.18	
1 2" nipple	....	.05	
1 1½" galv. tee	22.50	.23	
1 1½" galv. bushing	....	.04	
24 gals. Elaine oil	.27	6.48	
Long distance telephones	....	2.00	
			403.08
Ten percent of cost of material			40.31
			6,589.94

E. & O. E.

Approved:
NORTH PACIFIC STEAMSHIP CO.,
By —— ——, *Supt. Engineer.*

(Bill Head of Hall Brothers Marine Railway and Ship Building Co.)

Dock Statement.

(Str. "Yucatan" & Owners.)

6/25/11.	Sunday	8 a. m. to 5 p. m.	8 hrs.	5 p. m. to	6 p. m.	1 hr.
6/26/11.	Monday	8 a. m. to 5 p. m.	8 hrs.	5 p. m. to	7 p. m.	2 hrs.
6/27/11.	Tuesday	8 a. m. to 5 p. m.	8 hrs.	5 p. m. to	7 p. m.	2 hrs.
6/28/11.	Wednesday	8 a. m. to 5 p. m.	8 hrs.	5 p. m. to	7 p. m.	2 hrs.
6/29/11.	Thursday	8 a. m. to 5 p. m.	8 hrs.			
6/30/11.	Friday	8 a. m. to 5 p. m.	8 hrs.	5 p. m. to	7 p. m.	2 hrs.
7/ 1/11.	Saturday	8 a. m. to 5 p. m.	8 hrs.	6 p. m. to	10 p. m.	4 hrs.
			56 hrs.			13 hrs.

Total number of hrs. worked 69 hours or 8⅝ lay days.

"EXHIBIT B."—Continued.

(Bill Head of Hall Brothers Marine Railway and Ship Building Co.)

WINSLOW, WASH., July 10th, 1911.

#1165.

Sold to Str. "Yucatan" & Owners.

Labor & Material Furnished from 7/3/11 to 7/8/11, Incl.

Dockage:				
One lay day				302.50
Labor:				
Carpenter foreman	14	hrs.	6.00	10.50
Carpenters	112	hrs.	4.50	63.00
Labor foreman	12½	hrs.	4.75	7.43
Laborers	171½	hrs.	2.50	53.60
Mill men	1	hr.	2.50	.31
Blacksmiths	3	hrs.	5.00	1.87
Blacksmiths	6	hrs.	3.75	2.81
Engineer	11½	hrs.	4.00	5.75
Fireman	2	hrs.	2.50	.62
Machine foreman	15	hrs.	6.00	11.25
Machinists	50	hrs.	4.00	25.00
Machinist helpers	4½	hrs.	2.50	1.41
Ship fitter foreman	10	hrs.	8.00	10.00

Riveters	56	hrs.	4.00	28.00	
Holder on	120	hrs.	3.00	45.00	
Ship fitters	52	hrs.	4.00	26.00	
Heaters	32	hrs.	2.75	11.00	
Caulkers	34	hrs.	4.00	17.00	
Air holder on	36	hrs.	3.50	15.75	
Air riveter	36	hrs.	5.00	27.00	
Helpers	114	hrs.	2.50	35.63	
					398.93
Fifteen percent of cost of labor					59.84
37 Use of Equipment:					
Use of machines	33	hrs.	.60	19.80	
Use of air tools	160	hrs.	.60	96.00	
Air compressor	35	hrs.	2.50	87.50	
Dynamo	34	hrs.	1.50	51.00	
Sawmill	2	hrs.	1.50	3.00	
Blacksmith forges	9	hrs.	.80	7.20	
Tug "Klatawa"	2	hrs.	2.50	5.00	
Steam pump	12	hrs.	.60	7.20	
Fifteen-ton chain block	6	days	5.00	30.00	
Three-ton " "	5	days	2.00	10.00	
					316.70
Material:					
Making pattern & casting 1 pump head			....	2.40	
Making 12 skylight sash			....	66.51	
Flanging 5 steel plates, as per templates			....	115.53	
1 keg 7/8 x 4 C. H. rivets 100 lbs			3.50	3.50	

"Exhibit B."—Continued.

1 keg 7/8 x 3½ " " 100 lbs.	3.50	3.50
250 Bm. template stock	20.00	5.00
282 lbs. cone head rivets	3.50	9.87
3 lbs. blk. washers	.05½	.16
6½ galv. washers	.08	.51
9½ lbs. 2¼" hex. brass rod	.28	2.66
1 lb. flake graphite	....	.20
3 doz. 1¼ x 10 br. screws	....	.18
2 doz. 1 x 8 " "	....	.08
½ doz. 1½ x 12 " "	....	.05
1 doz. 1½ x 10 galv. screws	....	.05
1 doz. 4 x 24 " "	....	.30
2 doz. 1½ x 12 " "	....	.12
3 doz. 2½ x 13 " "	....	.36
18 pcs. ¼ x 1 stove bolts	....	.06
12 3/8 x 1¼ mach. bolts	.96	.12
12 ¾ x 2 " "	3.08	.37
4 ¾ x 3½ " "	3.68	.15
6 lbs. 1⅛" hex. tap nuts	7.25	.44
34 lbs. 1¼" " " "	....	2.47
7½ lbs. 1⅜" " " "	....	.54
21 lbs. ⅝" galv. hd. bolts	.07	1.47
660 lbs. 1" rd. Norway iron	4.25	28.05
27 lbs. blk. rd. iron	2.50	.68
63 lbs. " flat "	....	1.58
65 lbs. galv. sheet iron	4.25	2.76
251 Bm. fir	22.50	5.78
5½ lbs. Magnolia babbit- metal	.23	1.27

3½ lbs. tallow		.08	.28	
5 lbs. red lead		.07½	.38	
7½ lbs. white lead		.08	.60	
¾ gal. boiled linseed oil		1.02	.76	
1 2″ galv. strainer and foot valve		....	1.40	
3200 lbs. cement		....	25.20	
7 sets wax candles		.12¾	.88	
4 ¼″ cl. nipples		....	.04	
7 ¼″ tees		2.52	.17	
7 ¼″ plugs		....	.06	
2 ⅜″ nipples		....	.02	
1 ⅜″ street ell		....	.03	
1 ⅜″ reducer		....	.04	
1 ⅜″ globe valve		....	.50	
5½ lbs. galv. fin. nails		4.50	.25	
1 lb. galv. cut nails		....	.04	
1 ¾″ bushing		....	.02	
38				
1 ¾″ cl. nipple		....	.02	
1 1″ 45 deg. ell		....	.08	
1 ½ x 4 lag screw		....	.02	
1 14″ flat bastard cut file		....	.30	
14 ¾″ deck plugs		....	.02	
1 pr. 6″ galv. refr. hinges		....	.40	
Long distance telephone calls		....	1.50	
6 pairs cast brass skylight hinges cast for you		....	25.95	
				315.69
Forward				1,077.97

"EXHIBIT B."—Continued.

Material: forward	315.69
Ten per cent. of cost of material	31.57
Total	$1,425.23

E. & O. E.

Approved:

NORTH PACIFIC STEAMSHIP CO.,

By —— ——, *Supt. Engineer.*

Approved subject to credit of $69.00 allowance on use of chain tackles and air tools.

Approved:

NORTH PACIFIC S. S. CO.,

By HENRY CAUL.

(Bill Head of Hall Brothers Marine Railway and Shipbuilding Co.)

WINSLOW, WASH., July 17, 1911.

4—745

Sold to Str. "Yucatan" & Owners.

#1168.

Miscellaneous Labor and Material 6 7/10/11 to 7/15/11, Inclusive:

Labor:				
Carpenter foreman	11	hrs.	6.00	8.25
Carpenters	140	hrs.	4.50	78.75
Labor foreman	3	hrs.	4.75	1.78
Laborers	9	hrs.	2.50	2.81
Rigger foreman	8	hrs.	4.00	4.00
Riggers	40	hrs.	3.20	16.00
Mill foreman	6½	hrs.	4.00	3.25
Millmen	4	hrs.	2.50	1.25
Blacksmiths	13½	hrs.	3.75	6.32
Blacksmiths	1	hrs.	5.00	.62
Blacksmith helpers	13½	hrs.	2.50	4.22
Engineer	21	hrs.	4.00	10.50
Fireman	21	hrs.	2.50	6.56
Machine foreman	16	hrs.	6.00	12.00
Machinists	24¾	hrs.	4.00	12.38
Machinist helpers	9	hrs.	2.50	2.81
Holder on	109	hrs.	3.00	40.88
Ship fitters	48	hrs.	4.00	24.00
Caulker	48	hrs.	4.00	24.00

HALL BROTHERS MARINE RY. & SHIPB'LD'G. CO.

"EXHIBIT B."—Continued.

Helpers	136 hrs.	2.50	42.50	
Driller	40 hrs.	4.00	20.00	
				322.88
Fifteen per cent. of cost of labor				48.43
Use of Equipment:				
Use of machines	19¾ hrs.	.60	11.85	
Use of air tools	268 hrs.	.60	160.00	
Air compressor	59 hrs.	2.50	147.50	
Dynamo	60 hrs.	1.50	90.00	
Flange fire	5 hrs.	2.50	12.50	
Sawmill	8 hrs.	1.50	12.00	
Steam pump	12½ hrs.	.60	7.50	
Five-ton chain blocks	6 days	5.00	30.00	
Three-ton chain blocks	12 days	2.00	24.00	
Blacksmith forges	14½ hrs.	.80	11.60	
				507.75
40 Material:				
10 bars angles 3½ x 3½ x ⅜ 1955#		2.65	51.81	
160 lbs. ½" plate		2.50	4.00	
11½ lbs. sheet lead		.10	1.15	
31 ¾ x 2 blk. mach. bolts		3.08	.95	
12 ¾ x 3½ " " "		3.28	.39	
8 ¾ x 4 galv. " "		7.25	.58	
6 ¾ x 7 blk. " "		5.08	.30	
1 ⅞ x 5 " " "		6.16	.06	
6 ⅝ x 1½ " " "		2.08	.12	

6	5/8 x 8 1/2 " " "	4.20	.25
4	3/4 x 6 " " "	4.68	.19
4	7/8 x 3 " " "	5.04	.20
32	7/8 x 9 galv. lag screws	.18	5.76
3	7/8 x 7 " " "	.15	.45
5	7/8 x 5 " " "	.12	.60
6	5/8 x 5 blk. " "	2.40	.12
4	5/8 x 1 1/2 C. S. headed bolts	5.20	.21
12	3/4 x 2 " " "	7.70	.92
1	1 1/2" Lukenheimer globe valve	....	2.35
1	1/8" C. L. Nipple	....	.01
1	1/4" bushing	....	.01
2	3/8" galv. plugs	....	.04
1	4" galv. couplings	....	.30
2	4" galv. nipples	.37	.74
1	doz. 7/8 x 7 brass screws	....	.03
1/3	doz. 7/8 x 10 galv. screws	....	.01
1	doz. 3/4 x 14 galv. screws	....	.03
1	doz. 1 1/4 x 12 brass screws	....	.08
1 1/2	doz. 1 1/2 x 13 " "	....	.15
3	doz. 3/4 x 6 " "	....	.09
3 1/2	doz. 1 1/4 x 7 " "	....	.14
6	pcs. 1/2 x 1 cap screws	2.13	.13
1/2	lb. 1 1/2" hex. tap nuts	9.25	.05
4 1/2	lbs. " " " "	7.25	.33
4	lbs 1 3/8" hex. tap nuts	7.25	.29
9	lbs. 5/8" brass rod	.28	2.52
2	2 1/4 x 8 C. I. sheaves	....	1.20
1	pr. 2 x 2 1/2 strap hinges	....	.90
4	pr. 2 x 2 1/2 brass butts	.30	1.20

"EXHIBIT B."—Continued.

14	ft. ¾ x 2 molding	....	.28	
1617	Bm. Asst. fir	22.50	36.38	
100	lbs. blacksmith coal	....	.81	
8¼	lbs. track nails	.07	.58	
5	lbs. galv. wire nails	4.25	.21	
5	lbs. galv. washers	.08	.40	
8½	lbs. *g*lk. washers	.05½	.47	
12	sets stearic wax candles	.12¾	1.53	
760	lbs. cement	....	5.93	
40	ft. ¾" galv. pipe	....	1.80	
Telephones and telegrams		....	2.85	
Freight paid for you as per attached slips		....	13.10	
				143.00
Ten per cent of cost of material				14.30
Total				1,036.36

E. & O. E.

Approved:

NORTH PACIFIC STEAMSHIP CO.,

By —— ——, *Supt. Engineer.*

(Bill Head of Hall Brothers Marine Railway and Ship Building Co.)

WINSLOW, WASH., July 24, 1911.

Sold to Str. "Yucatan" & Owners.

Labor and Material Furnished July 17th to 22nd, Inclusive.

Labor:				
Carpenter foreman	11	hrs.	6.00	8.25
Carpenters	112	hrs.	4.50	63.00
Sparmaker foreman	6	hrs.	5.00	3.75
Sparmakers	8	hrs.	4.50	4.50
Labor foreman	8	hrs.	4.75	4.75
Laborers	51	hrs.	2.50	15.94
Rigger foreman	3	hrs.	4.00	1.50
Riggers	16	hrs.	.40	6.40
Blacksmiths	14½	hrs.	3.75	6.80
Blacksmiths	6½	hrs.	5.00	4.88
Blacksmith helpers	41	hrs.	2.50	6.56
Engineer	5	hrs.	4.00	2.50
Fireman	5	hrs.	2.50	1.56
Machine foreman	11	hrs.	6.00	8.25
Machinists	29½	hrs.	4.00	14.75
Machinist helpers	4¾	hrs.	2.50	1.49
Holder on	48	hrs.	3.00	18.00
Ship fitters	48	hrs.	4.00	24.00
Chipper and caulker	20	hrs.	4.00	10.00
Helpers	108	hrs.	2.50	33.75

HALL BROTHERS MARINE RY. & SHIPB'LD'G CO.

53

"EXHIBIT B."—Continued.

Driller	48	hrs.	3.50	18.00	
					258.63
Fifteen per cent of cost of labor					38.79
Use of Equipment:					
Use of machines	18¾	hrs.	.60	11.25	
Use of air tools	159	hrs.	.60	95.40	
Air compressor	50½	hrs.	2.50	126.25	
Steam pump	1½	hrs.	.60	.90	
Blacksmith forges	21	hrs.	.80	16.60	
					326.15
Material:					
211 lbs. ¾ x 3 C. H. rivets				3.50	7.00
50 lbs. 1" rd. Norway iron				4.25	2.13
15 lbs. ½ x 2 " "				....	.64
28 lbs. ¾ x 4 mild steel				2.50	.70
40 lbs. 5/16" plate				....	1.00
45 lbs. rd. mild steel				....	1.13
16 ⅜ x 1½ mach. bolts				....	.16
135 ⅝ x 1½ " "				2.23	3.01
2 ¼ x 2 " "				....	.02
6 ⅜ x 3½ " "				1.22	.07
6 ¾ x 6 " "				4.68	.28
24 ½ x 1 " "				1.44	.35
10 ¾ x 2½ " "				3.28	.33
40 ¾ x 2 " "				3.08	1.23

1	¾ x 3 mach. bolts	3.48	.03
1	1 x 3 " "	....	.07
½	doz. 1½ x 10 brass screws	.07	.04
8	doz. 2 x 18 " "	.23	1.84
2½	doz. 2½ x 20 " "	.33	.83
14	brass drawer pulls	....	.98
1	3" galv. long nipple	....	.28
1	3" " ell	....	.83
1	1½ x 5 galv. long nipple	....	.10
1	2 x 6 galv. nipple	....	.15
1	1½" galv. long nipple	....	.07
1	1½" blk. long nipple	....	.04
2	2" blk. ell-	....	.36
2	2" galv. ells	....	.57
732	Bm. fir	22.50	16.47
12	lbs. ⅜" rd. blk. iron	2.50	.30
2	⅜ x 3 cotter pins	....	.04
9¼	lbs. blk. washers	.05½	.51
¾	lb. galv. washers	.08	.06
3	⅝ x 4 galv. lag screws	5.25	.16
3	⅝ x 5 galv. lag screws	6.00	.18
1	⅝ x 4 blk. lag screws	....	.02
6½	lbs. com. wire nails	.03	.20
1	lb. galv. boat nails	....	.07
5½	lbs. galv. wire fin. nails	....	.33
1	lb. 1" hex. tap nuts	....	.07
2	lbs. 1⅛" hex. tap nuts	....	.15
38	lbs. cone head rivets	3.50	1.33

"EXHIBIT B."—Continued.

2	lbs. ⅜ x 8 galv. Norway bolt rivets	.15	.30	
4	½" galv. plugs	....	.06	
1	lb. pump leather	....	.35	
6	lbs. C. I. rubber packing	.25	1.50	
¼	lb. galv. cl. rings	....	.03	
100	lbs. cement	....	.75	
2	pair 4 x 4 brass butts	....	1.84	
2	3" brass hooks and eyes	....	.12	
2	sets wax candles	.12¾	.26	
2	galv. hull black	1.20	2.40	
Long distance telephones		....	1.25	
				52.99
Ten per cent. of cost of material				5.30
Total				$681.86

E. & O. E.

Approved:
NORTH PACIFIC STEAMSHIP CO.
—— ——, *Supt. Engineer.*

(Bill Head of Hall Brothers Marine Railway and Shipbuilding Co.)

WINSLOW, WASH., July 31, 1911.

Sold to Str. "Yucatan" & Owners.

No. 1174.

Labor and Material Supplied 7/24/11, Incl.

Dockage:						
Hauling (July 28, 8 a. m.–5 p. m.)				....	705.00	
One lay day, July 29th				....	352.50	
						1,057.50
Labor:						
Carpenter foreman	2	hrs.	6.00	1.50		
Carpenters	42	"	4.50	23.63		
Labor foreman	16	"	4.75	9.50		
Laborers	20 4½	"	2.50	63.91		
Mill foreman	1½	"	4.00	.75		
Blacksmiths	6½	"	3.75	3.04		
"	2	"	5.00	1.25		
Blacksmith helpers	8½	"	2.50	2.66		
Machinist foreman	1	"	6.00	.75		
Machinists	6	"	4.00	3.00		
Machinist helpers	5	"	2.50	1.56		
Donkeyman	6	"	3.20	2.40		
Riveters	1	"	4.00	.50		
Holder on	40	"	3.00	15.00		

"EXHIBIT B."—Continued.

Shipfitters	40	"	4.00	20.00	
Helpers	20	"	2.50	6.25	
Drillers	19	"	3.00	7.13	
				162.83	
Fifteen per cent. of cost of labor				24.42	
					187.25
Use of Equipment:					
Use of machines	12	hrs.	.60	7.20	
Use of air tools	24½	"	.60	14.70	
Air compressor	8	"	2.50	20.00	
" "	10	"	1.00	10.00	
Dynamo	47	"	1.50	70.50	
Blacksmith Forge & coal	8½	"	.80	6.80	
Sawmill	1½	"	1.50	2.25	
8 ton chain blocks	3	days	5.00	15.00	
3 " " "	8	days	2.00	16.00	
Use of Steam Pump	2	hrs.	.60	1.20	
Use of donkey and fuel lead blocks, falls, etc., for propeller			....	10.00	
					173.65
Materials:					
64 lbs. mild steel			2.50	1.60	
32 lbs. 1¼" rd. blk. iron			2.50	.80	
80 lbs. blk. flat iron			2.50	2.00	
160 lbs. 5/16" plate			3.00	4.80	
48 lbs. T iron			3.25	1.56	
102 lbs. 2½ x 2½ angle iron			3.25	3.31	
220 lbs. 3/16" sheet steel			2.75	6.05	

263	lbs. No. 12 sheet steel	3.00	7.89
28½	lbs. Cone head rivets	3.65	1.04
177	Bm. fir	22.50	3.98
10	lin. ft. ¾″ quarter rd	....	.05
50	1½ x No. 30 Flat Hd. iron mach. screws	....	1.31
24	1½ x No. 24 12″ iron mach. screws	....	1.45
44			
40	lbs. blacksmith coal	....	.35
1¼	lbs. 1¼″ hex. tap nuts	7.25	.09
2	lbs. 1⅜″ " " "	7.25	.15
6	lbs. 2″ " " "	11.25	.68
80	lbs. ¼″ plate	2.75	2.20
2	2 x 17 hex. hd. bolts	....	4.80
54	½ x 1½ mach. bolts	1.44	.78
44	½ x 1¼ " "	1.44	.63
4	½ x 2 " "	1.54	.06
32	¾ x 2 " "	3.08	.99
12	⅞ x 7 " "	7.28	.87
6	½ x 4 blk. lag screws	....	.12
½	doz. 3 x 12 galv. screws	....	.06
½	doz. 4 x 18 " "	....	.12
2	doz. 3½ x 14 " "	....	.28
1	doz. 2½ x 14 " "	....	.05
1	doz. 2 x 14 " "	....	.07
12	doz. 1¾ x 11 brass screws	....	1.08
4¼	lbs. galv. washers	.08	.34
9	lbs. black "	.05½	.50
1	lb. brass escutcheon pins 1¼ x 14	....	.40
24	¼ x 1 stove bolts	....	.06

"EXHIBIT B."—Continued.

½ lb. 5/16" rd. brass rod	....	.14		
¼ lb. blk. template tacks	....	.02		
1 pr. 6" galv. ref. hinges	....	.30		
1½ lbs. ¼" pure gum	....	1.20		
2 1" *b*alv. screw shackles	.70	1.40		
Long distance telephones, paid for you	....	2.00		
			55.58	
Ten per cent. of cost of material			5.56	61.14
Total				1,479.54

E. & O. E.

Approved:

NORTH PACIFIC STEAMSHIP COMPANY,

By —— ——, *Supt. Engineer.*

(Bill Head of Hall Brothers Marine Railway and Shipbuilding Co.)

WINSLOW, WASH., August 7th, 1911.

Sold to Str. "Yucatan" & Owners.

#1187.

Dockage:					
One lay day Sunday, August 30th				no charge	
One lay day Monday, August 31st				352.50	352.50
Labor:					
Carpenter foreman	4	hrs.	6.00	3.00	
Carpenters	40	hrs.	4.50	22.50	
Labor foreman	2	hrs.	4.75	1.19	
Laborers	29	hrs.	2.50	9.06	
Blacksmiths	22½	hrs.	3.75	10.54	
Blacksmiths	1½	hrs.	5.00	.93	
Blacksmith helpers	24	hrs.	2.50	7.50	
Engineer	17	hrs.	4.00	8.50	
Fireman	15	hrs.	2.50	4.69	
Machine foreman	10	hrs.	6.00	7.50	
Machinists	33	hrs.	4.00	16.50	
Machinist helpers	7½	hrs.	2.50	2.35	
					94.26
Fifteen per cent. of cost of labor					14.14
45 Use of Equipment:					
Use of machines	19½	hrs.	.60	11.70	

"EXHIBIT B."—Continued.

Use of air tools	15	hrs.	.60	9.00	
Air compressor (single hose)	14	hrs.	1.00	14.00	
Dynamo	48	hrs.	1.50	72.00	
Eight-ton chain block	1	day	....	5.00	
Three-ton chain block	½	day	....	1.00	
Steam pump	19	hrs.	.60	11.40	
Blacksmith forge and coal	24	hrs.	.80	19.20	
Tug "Klatawa"	2	hrs.	2.50	5.00	
					148.30
Material:					
164 Bm. fir			22.50	3.69	
40 lbs. flat iron			2.50	1.00	
182 lbs. rd. iron			2.50	4.55	
1 lb. 1/32" sheet copper			....	.32	
28 lbs. cone head rivets			3.65	1.02	
5¼ lbs. 1" hex. tap nuts			7.25	.38	
2 lbs. 1⅛" hex. tap nuts			7.25	.15	
75 lbs. ¼" plate			3.00	2.25	
2¼ lbs. black washers			.05½	.14	
6 lbs. galv. wire nails			4.50	.27	
2 lbs. ½ x ½ solder			.25	.50	
2 2" Standard globe valves			1.95	3.90	
4 lbs. bronze rod			.28	1.12	
26 lbs. tool steel			.08	2.08	
¼ lb. black tacks			....	.02	
6 brass door hooks and keepers			2.00	1.00	
63 lbs. cement			....	.47	
36 lbs. tallow			.08	2.88	

2	½″ galv. screw eyes	....	.35
12	flat galv. pipe hangers	....	.75
¼	gal. gasoline	.22	.06
1	gal. engine oil	....	.22
2¼	lbs. ⅜″ Tuck's packing	.26	.59
1	8″ flat file	....	.12
3	5″ file handles	....	.10
10	gals. Elaine oil	....	2.80
1	1 x 1½ patch bolt	....	.13
1	1 x 2 patch bolt	....	.13
½	doz. 1½ x 12 br. screws	....	.05
¼	doz. 1¼ x 10 br. screws	....	.10
2	doz. 2½ x 12 galv. "	....	.24
1	½ x 4 mach. bolt	....	.02
2	½ x 2 mach. bolts	1.54	.03
86	⅝ x 1½ " "	2.08	1.79
18	⅝ x 2 " "	2.23	.40
12	½ x 2 car. bolts	1.20	.14
1	2½″ galv. reducer	....	.38
1	2″ galv. reducer	....	.22
1	1″ galv. union	....	.20
1	1″ galv. plug	....	.03
3	1″ galv. short nipples	2.75	.08
6	¾″ galv. bushings	....	.18
1	⅜″ galv. tee	....	.04
4	⅜″ galv. reducers	....	.16
2	⅜″ galv. sht. nipples	....	.03
2	½″ galv. plugs	....	.04
3	¼″ galv. plugs	....	.03
4	¼″ galv. long nipples	2.75	.11

"EXHIBIT B."—Continued.

2	3/8 x 48 x 96 plates 1240#	2.55	31.62	
33¾	lbs. port gum 8' x 1½ x 1½	1.00	3.75	
21¼	lbs. " " 25 sq. ft.	.90	2.03	
2	pair brass hinges	....	1.50	
25	lbs. 1½" sq. flax packing	.28	7.00	
Freight paid for you as attached slips		....	2.15	
46	Material (continued):			
7	portable rods	1.50	10.50	
1	¾" Colfer drill	2.80	2.80	
1	1-5/6" Colfer drill	....	6.00	
5	side sets and handles	.75	3.75	
i	rivet forge	....	16.50	
2	24" wedges	....	6.00	
2	18" wedges	....	4.00	
11	15/16" Colfer drill	3.80	3.80	
				136.58
Ten per cent of cost of material				13.66
	Total			$759.44

E. & O. E.

Approved:
NORTH PACIFIC S. S. CO.,
HENRY CAVE, *Supt. Engineer.*

Credit as per attached memo. 191.59

567.85

Due service of the within Amended libel hereby admitted this 6th day of November, 1912.

ANDROS & HENGSTLER,
Attorneys for Respondent.

(Endorsed:) Filed Nov. 6, 1912. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

47 In the District Court of the United States in and for the Northern District of California, First Division.

No. 15256.

HALL BROTHERS MARINE RAILWAY & SHIPBUILDING CO., a Corporation, Libelant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent.

Answer and Cross-libel.

The answer of North Pacific Steamship Company, a corporation, respondent herein, to the Amended Libel of Hall Brothers Marine Railway & Shipbuilding Co., in said alleged cause of contract, civil and maritime, alleges as follows:

I.

Admits the allegations in Article I of said Libel.

II.

Admits the allegations in Article II of said Libel.

III.

Admits the allegations in Article III of said Libel.

IV.

Admits that, in May, 1911, respondent entered into a contract with libelant for the repairs of the Steamer "Yucatan," but denies that the alleged contract referred to in Article IV, and of which "Exhibit A" therein referred to is a copy, is the whole contract entered into between libelant and respondent at said time, or on that behalf, but alleges that said "Exhibit A" was only part of said contract and was intended to be a mere memorandum of the rates or amounts to be paid by respondent to libelant for labor and services to be performed during said repairs.

V.

That among the covenants, stipulations and conditions of
48 the agreement made between libelant and respondent were the following stipulations: That the marine railway and repair shops of libelant at Winslow should be ready to receive said Steamer "Yucatan" for the purpose of making her repairs not later than June 4th, 1911; and that thereafter all the labor, equipment, machinery and material connected with and available to said yard at said time should be at the disposal of respondent in order to complete said repairs in time to enable said Steamer to enter upon a charter previously made, and the existence and terms of which charter libelant well knew. Respondent denies that libelant has duly performed all the covenants or stipulations or conditions of the agreement on its behalf to be performed, but on this behalf respondent alleges that said steamer was not admitted to the marine railway of libelant on June 4th, 1911, nor on any day earlier than June 17th, 1911; and that libelant did not, after said June 17th, 1911, place at respondent's disposal all the equipment, machinery, and material connected with and available to said yard, and that libelant, by its negligence and refusal in that behalf, delayed and seriously damaged said respondent.

VI.

Respondent denies that the sum of Twenty Nine Thousand Four Hundred Eleven and 25/100 — ($29,411.25), in Article VI of said libel mentioned, was a reasonable or proper charge against this respondent under the contract made between libelant and respondent, but, on this behalf, alleges that, had libelant performed the conditions of its contract, a charge for dockage amounting to the sum of $2,533.45 would have been saved to this respondent.

VII.

Respondent denies that the balance of Two Thousand Five Hundred and Thirty Three and 45/100 Dollars ($2,533.45), in Article
VII of said Libel mentioned, or any part thereof, or any
49 sum whatever, is due or owing to Libelant.

VIII.

Respondent denies that all or singular the premises in Article IX of said Libel referred to *as* true, excepting those herein admitted to be true.

Wherefore respondent prays that said Libel be dismissed, and for its costs.

C. H. SOOY.
ANDROS & HENGSTLER.
LOUIS T. HENGSTLER.

The Cross-libel

of North Pacific Steamship Company, a corporation, to the Libel of Hall Brothers Marine Railway and Shipbuilding Co., a corporation, in a cause of contract, civil and maritime, alleges:

I.

That, at all the times herein mentioned, the said cross-libelant North Pacific Steamship Company was, and still is, a corporation, organized and existing under the laws of the State of California, and doing business in the City and County of San Francisco, said Northern District of California, and that said cross-libelant at all of said times was under contract to purchase the American Steamer "Yucatan," and now is the owner thereof.

II.

That at all of said times, the said cross-respondent, Hall Brothers Marine Railway & Shipbuilding Co., was, and now is, a corporation organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City and County of San Francisco, in said State, and its shipbuilding plant at Winslow, State of Washington.

III.

That, on or about the 18th day of May, 1911, cross-libelant and cross-respondent respectively entered into a verbal contract wherein and whereby cross-respondent agreed to have its marine railway, shipbuilding yards and repair shops, at Winslow, ready to receive the Steamer "Yucatan," for the purposes of making the necessary repairs on the same, on a day not later than June 4, 1911, and further agreed that cross-respondent should then and there have ready and available a full and adequate equipment for the expeditious repair of said Steamer, and that all the labor, equipment, machinery and material connected with and available to said yard at said time should be at the disposal of cross-libelant in order to complete said repairs in time to enable said Steamer to enter upon a charter previously made with the Western Alaska Steamship Co., whereby cross-libelant had obligated itself to deliver said Steamer to charterer for the charter purposes on the 20th day of June, 1911. That the time agreed upon for the admission to said marine railway and shipbuilding yards was understood between the parties to be of the essence of this contract, and that cross-respondent then and there well knew that cross-libelant had contracted for said charter-party and was obligated to deliver the said Steamer in a repaired and seaworthy condition on the 20th day of June, 1911.

IV.

That cross-respondent did not perform the said agreement in the following particulars, which cross-libelant hereby assigns as breaches of contract: First, cross-respondent did not have its marine railway ship yards in readiness at the time agreed upon, and did not admit the said Steamer to its marine railway until the 17th day of June, 1911, whereby said repairs were delayed for 13 days;
51 Second, cross-respondent did not have a full and adequate equipment for the expeditious repairs of said Steamer in its shipyard as agreed, and did not use the inadequate equipment which it did have for the exclusive use of cross-libelant, whereby said repairs were delayed for a further period of — days.

V.

That by breach of contract as above stated and consequent loss of time and charter money, cross-libelant was damaged in the sum of $4.675.00.

VI.

That, as a direct consequence of said breach of contract, it became impossible for cross-libelant, and cross-libelant failed to place said Steamer "Yucatan" at the disposal of said Western Alaska Steamship Company, charterer as aforesaid, on the date agreed upon — the charter-party above mentioned, to-wit, on June 20, 1911. That, in consequence of said failure, said Western Alaska Steamship Company claims to have been damaged in the sum of $11,000.00, and holds cross-libelant liable and responsible for said damages, and that said Western Alaska Steamship Company has commenced a suit against said cross-libelant for the said damages; and that cross-libelant is, in addition to the damages above mentioned, damaged, in consequence of the breach of contract by cross-respondent, in the amount legally recoverable against it by said Western Alaska Steamship Company, which, on information and belief, will be the further sum of $11,000.00.

VII.

That the total amount of damages suffered by cross-libelant, by reason of the above mentioned breach of contract of cross-respondent, is the sum of $15,675.00.

52 VIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore this cross-libelant prays that said libelant and cross-respondent, Hall Brothers Marine Railway and Shipbuilding Com-

pany may be cited to appear and make answer to this cross-libel, and that it be ordered by the Court to give security in the usual amount and form, to respond in the damages claimed in this cross-libel, and that all proceedings upon the original libel filed herein be stayed until said security shall be given; and that libelant and cross-respondent be further required to answer on oath this cross-libel and the matters therein contained, and that this Honorable Court may be pleased to decree to cross-libelant the payment of the amount due to it, with interest and costs, and that cross-libelant may have such other and further relief as in law and justice it may be entitled to receive.

C. H. SOOY,
ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,
Proctors for Cross-libelant.

53 *Answer to Interrogatories Propounded to Original Respondent on Behalf of Original Libelant.*

Answer to First Interrogatory.

We have the originals of all the bills constituting "Exhibit B," except one, and of that one we have a duplicate.

Answer to Second Interrogatory.

All these bills were approved by our representative with the exception of the bill of June 26, 1911, and July 3, 1911.

Answer to Third Interrogatory.

Answer given to Interrogatory 2 answers Interrogatory 3.

Answer to Fourth Interrogatory.

We have all these bills in our possession as stated in answer to Interrogatory 1. They are approved by Mr. Henry Cave, Superintendent Engineer. The bill of June 26, 1911, was approved subject to the qualifying statement added in Mr. Cave's handwriting: "As per attached receipt in am't of $6952.71." The bill of July 3, 1911, was approved subject to the qualifying statement added in Mr. Cave's handwriting: "As per attached receipt in am't $6098.38.

C. H. SOOY,
ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,
Proctors for Cross-libelant.

54 UNITED STATES OF AMERICA,
Northern District of California, ss:

Chas. P. Doe, being duly sworn, deposes and says: That he is an officer of North Pacific Steamship Company, a corporation, respond-

ent and cross-libelant in the above entitled cause, to-wit, the President thereof; that he has read the foregoing answer, cross-libel, and answer to interrogatories, and knows the contents thereof; that the same are true of his own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters that he believes them to be true.

CHAS. P. DOE.

Subscribed and sworn to before me this 20 day of December, 1912.

[SEAL.] FRANCIS KRULL,
Deputy Clerk U. S. District Court,
Northern District of California.

(Endorsed:) Filed Dec. 20, 1912. W. B. Maling, Clerk, by Francis Krull, Deputy Clerk.

55 In the District Court of the United States in and for the Northern District of California, First Division.

Before Hon. Maurice T. Dooling, Judge.

No. 15256.

HALL BROTHERS MARINE RAILWAY & SHIPBUILDING CO., Libelant,
vs.
NORTH PACIFIC STEAMSHIP COMPANY, Respondent.

(Testimony Taken in Open Court.)

Thursday, August 12, 1915.

Counsel Appearing:

For the Libelant: George W. Whipple, Esq.
For the Respondent: C. H. Sooy, Esq., Andros & Hengstler, Golden W. Bell, Esq., and H. W. Glensor, Esq.

(The above-entitled cause came on regularly for trial this Thursday, the 12th day of August, 1915, and the following proceedings were had:)

The Court: Is it your intention, gentlemen, to have this testimony transcribed?

Mr. Bell: That will be satisfactory, your Honor.

Mr. Whipple: Yes, your Honor.

I will make a short statement as to the nature of the case. This is a libel by Hall Brothers Marine Railway & Shipbuilding Co., a corporation, vs. North Pacific Steamship Co., founded upon certain work and repairs done to the steamer "Yucatan," owned by the North Pacific Steamship Company. The repairs were made in her about the months of May and June, 1911. The bill for those repairs was rendered. The libel of the Hall Brothers Co., in the first instance, is for a balance of $2533 due upon that bill, and which is not paid.

56 There was an answer filed and a cross-libel. The first part of the answer is practically a general denial; the second part of the answer sets up certain affirmative defenses with regard to the contract, as to delay, and as to equipment. It further sets up a damage of $11,000 based upon a suit which was brought against the North Pacific Steamship Company by the Western Alaska Steamship Company. Those cases have been before your Honor before. They were at one time consolidated, but finally the Western Alaska Steamship Company, being a charterer, and claiming this damage for delay, and the Northern Pacific having answered that libel of the Western Alaska, obtained at that time an order that either security must be put up, or the libel discontinued; that went on for a number of months, and finally a motion was made to dismiss the libel for want of prosecution, and also for a default on the cross-libel for $7,700. In pursuance of that motion, the order was made and is now entered in the records of the court dismissing the libel of the Western Alaska Steamship Company and entering the default of the Western Alaska on the cross libel for $7,700, which was for charter hire.

In the answer of the North Pacific to the Hall Brothers libel, as I have stated before, there was a cross-libel, and to that cross-libel we have made answer stating that the contract was not as set forth in the cross-libel; the contract in the cross-libel being stated to be that we should dock this vessel at a certain specified and definite date. We have denied that we made any such contract; we have further denied that the equipment was in any way to blame for any delay in the repair of the ship. We set up that the main part of the delay was owing to certain orders which were made by the local inspectors at Washington, this vessel having been repaired at the shipyard of Hall Brothers Marine Railway & Shipbuilding Co., at Winslow, which is just across the bay from Seattle.

57 I think that will give you an idea of just what the issues are.

Mr. Bell: I would like to state, on behalf of the respondent and cross-libelant, your Honor, that I think the defense can really be divided into two heads, and also the allegations in the cross-libel The first one is that it was agreed in this contract between Hall Brothers and the North Pacific that the vessel should be given the privilege of the ways not later than June 4th; that contrary to that agreement, when June 4th came along there was another vessel still on the ways, and that therefore the vessel in question here, the "Yucatan", did not have the privilege of going on the ways at that time, and did not have that privilege until the 17th of June, thus holding her up for 13 days; that she was under charter party which was to go into effect on the 20th day of June; that therefore by reason of the fact that she was not permitted to go on the ways on the 4th day of June as per the agreement, and she was delayed until the 17th of June, she thereby lost 13 days of the charter party.

The other defense, and also the other ground upon which the cross-libel is founded, is that it was agreed on the part of libelant that an adequate equipment, and so forth, would be furnished on

the ways for the repair of the vessel, the speedy repair of the vessel; that the equipment which was furnished was not adequate. Furthermore, that the agreement between the parties was that the exclusive use of the ways and the labor and the tools to be used thereon should be at the use of the North Pacific for the "Yucatan" during the time she was there; that contrary to that, they did not have the exclusive use of those things, because those things were being used at the same time for the further repair of the vessel which was on the ways at the time when the "Yucatan" should have been given permission to go on the ways.

58 It is therefore alleged in the cross-libel that the cross-libelant is entitled to damages which are arrived at in this way; 13 days, between the 4th of June, when she should have gone on, and the 17th, for loss in charter hire by reason of the fact that they were delayed that much longer; and 4 days—the time equivalent to four days—that they were there by reason of the inadequate equipment, and also the fact that the inadequate equipment was not exclusively used in the repair of the "Yucatan."

I think that the issues come down to those matters. In the cross-libel it is also alleged that suit had been brought by the Alaska Steamship Company against the present respondent, the North Pacific Company, for failure to deliver the vessel as they had agreed in their charter party, namely, on June 20; they were sued for $11,000 damages in that suit. We allege in our defense here, and in the cross-libel, that if we had to pay that company the amount of $11,000 we would be entitled to recover it from the respondent in this case, owing to the fact that it was this negligence and breach of contract which caused that; however, now that that libel has been stricken from the files and default entered on the cross-libel in that proceeding, this case comes down simply to the damages of $4,600 odd, the 13 days of delay between the 4th and the 17th of June, and the 4 days' loss of time.

Mr. Whipple: Mr. Bell, may I ask you a question? Did you, in your libel which was filed here in court, say 4 days, or is that blank?

Mr. Bell: It was blank.

Mr. Bell: The 13 days are set up, but the other is left blank. It is four days; it should have been put in.

Mr. Whipple: If your Honor please, I would like to have it appear in the record here that no claim is now made for damages under paragraph 6 of this cross-libel.

59 Mr. Bell: Paragraph 6 is the $11,000, is it?

Mr. Whipple: That is the $11,000.

Mr. Bell: I would not like to waive that, your Honor. It seems to me that the way the case stands will speak for itself in that respect.

Mr. Whipple: I think it will.

Mr. Bell: If at any time they should bring this other proceeding to life again in any way, I would want the right to proceed to recover the $11,000; I would not want to waive that right.

Mr. Whipple: The fact is that the libel has been dismissed and

judgment on the cross-libel—on default of the libelant—has been entered.

Mr. Bell: In the other proceeding?

Mr. Whipple: Yes. All they have to do is to enter up the judgment of dismissal and the judgment of $7,700; that is the end of that.

Mr. Bell: Yes. I don't think that that will have anything to do with this proceeding.

Mr. Whipple: I don't think so, either.

JOHN L. HUBBARD, Called for the Libelant, sworn.

Mr. Whipple:

Q. Mr. Hubbard, where do you reside?

A. Winslow, Washington.

Q. Is that right near Seattle?

A. About eight miles distant.

Q. Is Winslow, Washington, the place where the Hall Brothers Marine Railway & Shipbuilding Company have their yards?

A. Yes, sir.

Q. Are you connected with that company?

A. I am.

Q. In what way?

A. As manager.

Q. As manager of what?

A. Of the business at Winslow.

60 Q. Where are the offices and principal place of business of Hall Brothers?

A. We maintain three offices. In our charter, I think Seattle is mentioned as the principal office.

Q. Well, you have an office in San Francisco, haven't you?

A. Yes, sir.

Q. And the president of your corporation resides in San Francisco?

A. He does.

Q. Who is the president of your corporation?

A. Mr. George E. Billings.

Q. Were you manager of the said yards in the month of May, 1911?

A. I was.

Q. And you were in charge of the yards?

A. Yes, sir.

Q. About the 19th day of May, did your company enter into a contract with the North Pacific Steamship Company for certain repairs on the "Yucatan"?

A. Yes, sir.

Q. Have you got a copy of that contract?

A. I have.

Q. Have you got it with you?

A. I have it in that grip, there.

Q. Will you kindly get it?

A. Yes, sir. (Handing.)

Q. I will ask you, Mr. Hubbard, if that is the contract into which you entered, and whether that is the signature of Hall Brothers and the signature of Mr. Doe?

A. It is, sir.

Q. Who is Mr. Doe?

A. The gentleman sitting there at the table.

Q. I know that, but what position does he hold in the North Pacific Steamship Company?

A. He is the president and manager, I believe, of the North Pacific Steamship Company.

Mr. Whipple: If your Honor please, we would like to introduce this contract in evidence, and have it marked "Libelant's Exhibit 1". Would your Honor like to have this contract read?

The Court: Either that, or I will look over it myself.

(The document was marked "Libelant's Exhibit 1.")

61 Mr. Whipple: It is attached to the complaint, a copy of it is attached to the complaint.

The Court: All right.

Mr. Whipple: Do you want me to read it now, Mr. Bell? I might read just the principal part of it. It is dated May 19, 1911. It is a letter addressed to the North Pacific Steamship Company, Mr. Doe, President, and headed "Steamship 'Yucatan'." This part reads as follows:

"Responsive to your personal request of this A. M. for our terms for making repairs to the above vessel, we beg to submit the following:—

We will agree to haul the vessel out on our Marine Railway with the use of same for 24 hours for $705.00.

For Six Lay Days immediately following hauling out we will make a lay day charge for each day of 24 hours per day 352.50.

For each working day after the expiration of seven days we will allow a lay day rate of per day 302.50.

above rates to not apply to Sundays or holidays unless work is carried on upon the vessel.

Above rates contemplate allowing work to be carried on upon the vessel the usual working day 8 hours out of each 24 hours and in case you desire to work overtime, the same lay day rates will apply upon such overtime worked upon the vessel as a new day, and must be paid for pro rata according to such overtime in which work is carried on.

Dockage to be paid for in full at the end of each week."

And then the next heading states the amount of money which will be charged for running air compressors per hour; then it states that the necessary labor will be charged for at cost, with an addition of 15%; and the equipment will be charged for at a certain rate per hour, and the materials, with 10%, and then a charge for labor.

62 Then it provides that the Hall Brothers Marine Shipbuilding & Railway Co. shall not be required to insure said vessel

against fire. And then there is a clause as to the use of a tug. It is signed by both parties. It is accepted by Mr. Doe as president of the respondent company.

Q. Mr. Hubbard, in pursuance of that contract, did you put the vessel upon the railway to take her into the yard and start to repair her?

A. We did.

Q. About what date did you commence those repairs?

A. I could refresh my memory as to exact dates from our daily records at the yard. My remembrance is that the repairs were commenced somewhere about the 8th or 10th of June.

Q. Repairs to the vessel?

A. Yes, sir.

Q. On the 8th or 10th of June?

A. That was deck repairs, repairs not requiring the vessel on the dock.

Q. Will you look at your papers, Mr. Hubbard, and see whether or not you commenced those repairs in the month of May? These are memoranda, Mr. Hubbard, made by yourself at the time, are they not?

A. Yes. About May 19th.

Q. May 19th was the date of the contract, wasn't it?

A. Yes, sir.

Q. I show you these bills. Do you recognize those bills? Were they drawn up under your supervision? Copies of them are on the libel?

A. Yes, sir.

Q. What is the date of your first bill there, Mr. Hubbard?

A. June 3rd.

Q. What was that bill for?

A. For labor and material supplied this steamship "Yucatan."

Q. When?

A. During the week preceding that date.

Q. When did it commence, according to that?

A. That would be about the 25th of May.

Q. The 27th of May, wouldn't it be?

A. The 27th of May.

63 Q. Is that the time you commenced repairing the steamship?

A. I will give you the exact date here in just a moment: The 27th of May.

Q. The 27th of May was the day you started?

A. Yes, sir.

Q. What were the amounts of the bills you charged against the vessel for those repairs? I will show you this statement of yours. Do you recognize that as a statement of bills that were charged against the "Yucatan"?

A. Yes, sir.

Q. What is the aggregate of those bills?

A. $3,383.04.

Q. That was for that week?

A. Yes, sir.

Q. I show you here a statement. (Addressing Mr. Bell.) I think you have had this statement already, Mr. Bell. I will show you this statement, Mr. Hubbard, and ask you if that is a statement, or a copy of a statement, a correct copy, which you have furnished the North Pacific at the time you made demand for the money?

A. It is.

Q. What is the aggregate amount of the work you charged for in the bills for work on the steamer?

A. $29,411.25.

Q. And how much was paid you?

A. There is a balance, I think, due of $2400 or $2500.

Q. It is in there, it is on the statement.

A. $2533.45.

Q. And how much was paid you?

A. The remainder was paid.

Q. All but the $2533.45?

A. Yes, all but the $2533.45.

Mr. Whipple: Mr. Bell, you don't contest those bills, which were attached to the libel, do you?

Mr. Bell: Yes. Do you mean the correctness of the bill, as being a copy of these?

Mr. Whipple: Yes.

Mr. Bell: No. I think they are all right. I have not compared them with these bills particularly. Here are the originals of the bills. I think they agree with the amounts that you set out
64 there. I think the amounts are just the same as they are in the libel.

Mr. Whipple: I know they are. Are these all the bills?

Mr. Bell: Those are all the bills; I think there are ten there.

Mr. Whipple: I don't see the one, Mr. Bell, for $3383.04, the first bill of June 3rd; is that there? I think in answer to these interrogatories you said you had all but one.

Mr. Doe: There was one missing at one time; I don't remember whether it was ever found or not; it may be folded in with some of the others.

Mr. Whipple: If your Honor please, these are the various bills which were rendered by Hall Brothers to the North Pacific Steamship Company. These are the original bills. With the exception of two—you will stipulate to this, will you not, Mr. Bell, all with the exception of two were approved and paid; in other words, the bill of June 26th and the bill of July 3rd were not paid in full.

Mr. Bell: That is correct.

Mr. Whipple: We will offer these in evidence as one exhibit; there are ten bills.

(The bills were here marked "Libelant's Exhibit 2.")

Q. I understand, Mr. Hubbard, that the balance still claimed to be due on these bills is $2533.45.

A. Yes, sir.

Mr. Whipple: I think in order to facilitate the work of the court, we will offer this tabulation in evidence showing $2533.45 balance.
(The document was here marked "Libelant's Exhibit 3.")

Q. Mr. Hubbard, how long have you been in this business of repairing vessels?
A. 35 years.
Q. Will you state whether or not these bills are reasonable and proper charges for the work done, in your opinion?
A. They are.

Mr. Bell: Your Honor, I would like to have that answer stricken out and put it in the objection that it is immaterial whether those are proper charges, or not, owing to the fact that there is a
65 contract for the work here, and the question is whether or not the bills are pursuant to that contract.
Mr. Whipple: Yes, that is right.
The Court: If I catch the situation correctly, gentlemen, the correctness of these bills is not disputed.
Mr. Whipple: No, your Honor.
Mr. Bell: There is a balance on two of them. They are all paid in full except two. On two of the bills, a certain amount was paid. On one bill $491 and some odd cents was not paid, and was objected to; on another bill, the amount of $2000 and some odd — was not paid; that was objected to and protested, making in the aggregate the balance which they claim here, $2533.45.
The Court: Protested on the ground that the material had not been furnished?
Mr. Bell: On the ground that the bill is not proper. The protest appears on the bill. The bill is paid to a certain extent; it appears there that the balance of the bill is protested.
The Court: The question will not be as to whether this is a reasonable charge, but whether they conform to the stipulations in the contract.
Mr. Whipple: Yes, that is it. That question and answer can go out, I don't think it is material.

Mr. Whipple:

Q. Has that amount of $2533.45 ever been paid to you or to your company?
A. No, sir.

Mr. Whipple: That is all, Mr. Bell.

Cross-examination.

Mr. Bell:

Q. Mr. Hubbard, where was this contract letter which is attached to the libel drawn up: Was that at Winslow or at Seattle?
A. At Seatle.
Q. who was present at the time that memorandum was drawn up?
A. Mr. Doe and myself only.

66 Q. Just you and Mr. Doe?
A. Yes, sir.
Q. Are you sure that there was no one else present, Mr. Hubbard?
A. Yes, sir.
Q. And was that at your office, Mr. Hubbard?
A. Yes, sir.
Q. Mr. Billings, you said, was president of Hall Brothers Co.?
A. Yes, sir.
Q. He was in San Francisco at that time, was he?
A. Yes, sir.
Q. What time of day was it that that memorandum was prepared, Mr. Hubbard?
A. Why, the thing was discussed between Mr. Doe and myself orally in our office I think in the forenoon, and then I agreed to embody the terms of this oral understanding in writing and he would come in the next morning and look it over and sign it if it was satisfactory. That afternoon I wrote up this letter—that is my remembrance of it—and he came in the next morning, in company with Mr. Cave, the gentleman sitting there, and we went over the ground again, practically the same as Mr. Doe and I had together, and at the termination of that interview Mr. Doe signed the letter in question here and I signed it.
Q. Now, Mr. Hubbard, was the first conversation you had with Mr. Doe with reference to it on the 19th, the date of the contract, the date of this letter?
A. No, I think it was the 18th. I think he came in on the morning of the 19th and it was signed up.
Q. That was signed on the 19th?
A. Yes, sir.
Q. It is a fact, is it not, Mr. Hubbard, that this memorandum here did not embody all of the terms that you had agreed up-?
A. I think it does.
Q. Nothing seems to be said in this contract with reference to when the vessel shall go on the dock; was anything said with reference to that in the conversation which you had with Mr. Doe?
A. Not as an essential point at issue at all. That question might have been brought up in a general way, but not as any part of the terms of the agreement.
67 Q. What was said with reference to that in the conversation which you had with Mr. Doe, with reference to when the "Yucatan" should be placed on the dock?
A. Well, I think probably Mr. Doe questioned as to whether we could dock the vessel, whether our dock was available, the first thing, and we told him we had the dock engaged with another vessel that was under repairs. He wanted to know when he could get the dock for use in repairing the "Yucatan" and my remembrance is that I told him that when the repairs were finished on the vessel we were engaged upon he could have the dock immediately following.
Q. At that time, Mr. Hubbard, did you know that the North Pacific Steamship Company was under charter party for the "Yuca-

tan" to the Western Alaska Steamship Company, that charter party to take effect on the 20th of June?

A. I did not.

Q. Did Mr. Doe say anything to you about that?

—. I think not; I have no remembrance of it.

Q. Are you positive as to that, Mr. Hubbard?

A. Yes, sir.

Q. You are positive that you did not know that the North Pacific Steamship Company had a charter party at that time with the Western Alaska Company?

A. I was not cognizant of that fact until several days later, when the question of payment came up, and I was referred to the Western Alaska Steamship Company as being the parties who would pay the bills, and that they were the charterers. Mr. Doe had departed, and I had to deal with Mr. Cave at the time.

Q. I am speaking now before the 18th, and before the memorandum was signed by Mr. Doe and yourself. Now, prior to that time, Mr. Hubbard, did you not hear anything about a charter party between the North Pacific Steamship Company and the Western Alaska Company as to the "Yucatan"?

A. No, sir.

Q. You didn't know anything about such a charter party?

A. No, sir.

Q. Was anything said by Mr. Doe, at the time of the conversation with you on the 18th, as to when he wanted the "Yucatan"?

68 A. He wanted her as soon as he could get her.

Q. Did he tell you that he had to have her by any definite time?

A. Well, I think probably he did say that he wanted her somewhere in the latter part of the month, I think the 25th, or somewhere along there; he told me he had to have her by the 25th.

Q. How do you fix the 25th as being that time?

A. That is my remembrance, that is all. No definite date was given, and nothing embodied in the agreement there. A matter of my remembrance, that is all.

Q. Did not Mr. Doe tell you at that time that he had to have the vessel by a certain time?

A. No, I don't think he did.

Q. Just what did he say with reference to June 25th?

A. Well, he wanted to get her in commission for use, and he had had some trouble with the Heffernan dry-dock company, where he started in to repair the vessel, and he had decided to withdraw the vessel from there and wanted to take her over to us to do the repairs there, and he was anxious to get in as early as he could.

Q. Did you say anything to Mr. Doe as to when the vessel could go on the dry-dock?

A. I may have expressed an opinion as to about what time we would expect to get the other vessel off.

Q. What was the other vessel that was on there?

A. The barkentine "Archer."

Q. At that time, when did you expect to get the "Archer" off?

A. Somewhere between the 4th and the 10th of June.

Q. On the 19th, after you had had the conversation with Mr. Doe on the 18th, and at the time this written memorandum was signed by you and by Mr. Doe, was anything said with reference to when the vessel should go on the dry-dock?

A. Nothing further than that we would put her on the dry-dock immediately following the "Archer."

Q. How long was it, Mr. Hubbard, that the "Archer" was
69 on the dry-dock after the 19th of May?

A. She was on until the 16th of June, I believe.

Q. She was on there until the 16th of June?

A. Yes, sir.

Q. On the 19th, at the time this memorandum was signed, did you have any conversation with Mr. Cave, whom you have just mentioned?

A. Yes, sir, in the presence of Mr. Doe; that was the first time I ever met Mr. Cave. He was brought there by Mr. Doe and introduced to me as the gentleman who would supervise the repairing of the "Yucatan." We discussed the terms as embodied in that letter, and as had been discussed by Mr. Doe and myself the day previously.

Q. Now, can you give us that conversation, Mr. Hubbard, as nearly as you can recollect it, the conversation that occurred on the 19th between you and Mr. Cave?

A. Well, there is one thing I remember, Mr. Cave questioned whether our dock was capable of handling a vessel of the size of the "Yucatan," or not; and then he raised some questions as to what character of equipment we had there, air tools, compressed air for operating them, and possible something in connection with the facilities for boarding the men there during the time the vessel was repairing, and questions of that character that would come up to a practical man who is going out to undertake the job of repairing a ship like that. That is about all that I remember.

Q. And what did you say with reference to the points which Mr. Cave mentioned?

A. Well, I told him exactly what our equipment was and what we had there; Mr. Doe qualified that by saying that he was well acquainted with our yard, that he had repaired other vessels belonging to him there, and that he was satisfied we could handle the vessel and had adequate equipment.

Q. What did you say with reference to that?

A. I made no response. Mr. Cave said, "All right, Mr. Doe, if they have equipment of this character there, I can repair the vessel."

Q. What did you say with reference to what equipment you had there?

70 A. I cannot just recall it verbatim; I probably enumerated the list of tools; probably I gave the length of our dry-dock, and matters of that kind that would naturally come up in that connection.

Q. That was the conversation you had with Mr. Cave on the 19th.

Do you recollect what was said between you and Mr. Doe on the 19th?

A. No, I don't specifically. It was about the same nature of conversation held with Mr. Cave. We were all three talking there together, as men would who were going to undertake a job of that character, about things pertaining to the practical handling of the job, the best means of getting at it. That was the whole gist of the conversation.

Q. Was anything said by either Mr. Doe or Mr. Cave in that conversation with reference to the charter party of the "Yucatan" with the Western Alaska Company?

A. I stated a few moments ago I never heard of that until the question of payments came up a few days later.

Q. How many days later was that?

A. I think only three or four days, about the time the vessel came to the yard—two or three days.

Q. Had you had any negotiations with Mr. Doe prior to the 18th, when you had that conversation with him?

A. I had not.

Q. Mr. Doe came to you in Seattle, did he, Mr. Hubbard?

A. Yes, sir.

Q. And what did Mr. Doe say to you when he first came to see you?

A. He said he had bought the steamer "Yucatan" and had taken her to the Heffernan Dry-dock Company, but they were trying to hold him, or something, down there, he didn't want to stand for it, and he said "I would like to send the ship over to you there and get her repaired"; then we went into a general discussion of the matter, what he had to do; he stated and outlined about how many plates he had to put on, and so on, and the character of the repairs he wanted to do. That formed the basis for this agreement that was subsequently written up there as regards to Mr. Cave coming there and undertaking the repairs.

71 Q. Did you think, Mr. Hubbard, that it made no difference to Mr. Doe at that time when he got the ship?

A. No. I think he wanted to get it for use that season. I realized that he would not buy a vessel in that condition and spend a lot of money in repairing her unless he had some use for her, and of course the sooner he could get her would be the better for him.

Q. Did you give any estimate on how long it would take to make those repairs?

A. I did not; in fact, I was not doing the repairs. Mr. Cave was doing the repairs himself. We only furnished the dock and air and equipment and such men as they required of us.

Q. You said that it was on May 24 that you first did any work on the "Yucatan"; am I correct as to that?

The Court: The 27th, I think he said.

A. Yes, the 27th.

Mr. Bell:

Q. What work did you do on the 27th?

A. The vessel was brought to the yard; there was a large amount of work to be done in renewing decks that had been destroyed when the vessel was wrecked. She was submerged, as I understand, for a long time, and the ice floes had torn all the upper decks off; those decks had to be renewed. The work was started at Heffernan's; some of the material was on hand and was on board the vessel when she was brought over. We took up that work and put in the beams and laid the deck and did the deck work; that continued on until later she was docked.

Q. This work you speak of now was done on her as she lay alongside your dock?

A. Yes, sir.

Q. Before she was taken out of the water?

A. Yes, sir.

Q. That work could be done under those conditions just as well as if she was on the dock?

A. Yes, sir.

Q. Or it could have been on the dock?

A. Yes, sir.

Q. Either place?

A. Either place, just as well.

Q. Are you sure that that work begun on the 27th?

A. I am not positive. I don't think so. I don't think the
72 matter of payment was entirely agreed upon or arranged until a few days later than that, probably about the 28th or the 29th. I can tell you by my daily memorandum or record that I keep of the work going on in the yard.

Q. Have you that record or that memorandum there at which you can look and give us the exact time you began work on it?

A. Yes, I can give it to you. On the 27th, "Steamship 'Yucatan': repairs: only small crew working to-day: Will have more men at work Monday when we can have material on hand."

Q. And that was the first day that any work was done?

A. Yes, sir.

Q. This bill of June 3, was that bill entirely for work which was done while the vessel was lying alongside and not on the dock? Is that correct?

A. The bill rendered June 3rd——

Mr. Whipple: Here is a copy of the libel, Mr. Hubbard; those bills are attached to it.

The Court: That must be so if the vessel did not go on the dock until the 17th.

A. If it was rendered prior to the 17th it would be entirely for work performed while the vessel was afloat, work about the decks.

Mr. Bell:

Q. That bill was paid, was it?

A. Yes, sir.

Q. The next bill which was rendered, was what date, Mr. Hubbard—was it June 12?

A. Yes, June 12.

Q. That bill was also paid in full, wasn't it?

A. Yes, sir.

Q. The bill of June 19th, did that cover in part work which was done while the vessel was off the dock and partly work while she was on the dock?

A. Yes, sir.

Q. On this bill of June 19th, there appears at the top of the bill an item "Hauling; haul, 10 o'clock a. m. to 6, on the 17th, 1911"—that is correct, is it?

A. Yes, sir.

Q. It was the 17th that she was hauled out?

A. Yes, sir.

73 Q. $705. How do you arrive at that $705?

A. That is embodied in the letter of agreement, there, as to the amount for hauling the vessel out.

The Court: This may be material, Mr. Bell, but I understood all these matters were agreed to and paid up to the bills of June 26th and July 3rd.

Mr. Bell: Yes, your Honor. There are some similar items which occur in the later bills which also occur here; I want to find out how they were arrived at in these former bills in order to throw light on how they were arrived at in the later bills.

Q. There also appears in that same bill, Mr. Hubbard, "One-eighth lay day, 8 p. m. to 9 p. m., 6-17-11, $302.50, $44.06." How was that arrived at?

A. That would be a lay day charge in addition to this charge of $705 for hauling the vessel as agreed there.

Q. You charged one-eighth of a lay day; you would have a right there, Mr. Hubbard, to have charged for a full lay day, wouldn't you?

A. Oh, no, only the amount charged, 8 p. m. to 9 p. m. If they work one hour over eight hours, according to the terms of that agreement there, that applies as a new day to the extent of the time worked.

Q. What was a working day at the dock at that time?

A. 8 hours.

Q. And if a vessel was on the dock and eight hours were worked, and then some overtime was worked, what charge did you make?

A. In accordance with the number of hours they worked, as a lay day to that extent, one-eighth of a day or a quarter or a half a day, or whatever it is.

Q. Is it not a fact, Mr. Hubbard, that if a vessel is there during eight hours and overtime is worked, you then charge as for another day, that is to say, 24 hours would be divided into two days, really, wouldn't it?

A. Yes, you could get three days out of it if you worked continuously.

Q. Just how do you figure that?

74 A. I refer you to the terms of that agreement in that connection; in the letter there, it is fully covered.

Q. Now, you say that if you worked the 8 hours, and then if you worked over that time, you could charge for two lay days.

The Court: No, he didn't say that; he said he would charge in proportion; if he worked one hour overtime, it would be one-eighth of a day; two hours overtime I suppose would be one quarter. Is that what you say?

A. That is it, exactly.

Mr. Bell:

Q. Is it not a fact, Mr. Hubbard, that it was the custom of your yard and of all the other yards around there to charge for the working day, and then if there was work done over that, the charge would be made for the night, counting it as one more lay day?

Mr. Whipple: We object to that if your Honor please, the contract speaks for itself; it is not a question of custom.

The Court: It is only a question of what he did in this particular instance.

Mr. Bell: I don't think the contract is clear as to that. There is no doubt what the contention of Mr. Hubbard is, that under this contract if the vessel got in there and stayed there for 24 hours, if out of the 24 hours they only worked for 8 hours, he would have a right to charge them only $302.50; if they worked for sixteen hours, he would have the right to charge them twice that amount; and if they worked for the whole 24 hours, he would have the right to charge three times that amount. Now, it is our contention that that is not the proper construction of this contract. And furthermore, that it was the custom that the day under those circumstances should be divided into two but never into three; that if they worked 8 hours, and then if there was overtime—no matter how much that overtime was or how little it was—they had a right then to charge them another full day; but not to divide the 24 hours into three days and charge these people when they worked overtime three days instead of one. The clause of the contract is as follows:

75 "For 6 lay days immediately following hauling out we will make a lay day charge for each day of 24 hours $352.50; for each working day after the expiration of 7 days we will allow a lay day rate of $302.50. Above rates to not apply to Sundays or holidays unless work is carried on upon the vessel. Above rates contemplate allowing work to be carried on upon the vessel the usual working day 8 hours out of each 24 hours and in case you desire to work overtime the same lay day rates will apply upon such overtime worked upon the vessel as a new day and must be paid for pro rata according to such overtime in which work is carried on." That is two days, and not three days, as they seek to divide it into here. And furthermore, your Honor, we will show that that applied to the hours of work, not to the dockage of the vessel. If it said that it would appiy as two days, then possibly they could divide their 24 hours into three days of 8 hours each. But it does

not say that. It says the lay day will apply upon such overtime worked upon the vessel as a new day, and must be pro rated. That cuts out any possibility of their charging for three days in the 24 hours. To say the least, that clause is certainly ambiguous and would be subject to an explanation as to what the intention of the parties was. In that respect, the custom which they ordinarily follow would be material. That constitutes the entire amount which is in dispute. In this bill, there is one amount which is in dispute and in another bill there is an amount in dispute under that clause and they both make up the amount which they claim; that is the way they figures it.

The Court: In your point of view, what does that last clause mean, "and must be paid for pro rata according to such overtime in which work is carried on"?

Mr. Bell: That is pro rated, considering the balance of the 24 hours as being another day, and pro rating it according to the hours—not twice this amount.

76 The Court: That is, they work for 8 hours in any one day, there would be the full amount charged?

Mr. Bell: Yes, $302.50.

The Court: And then for overtime would be half that amount for each hour?

Mr. Bell: And then all the overtime after the 8 hours—the other 16 hours—is considered as another day.

The Court: Then working one hour, instead of being one-eighth, it would be, according to your contention, 1-16?

Mr. Bell: Yes, sir.

Mr. Whipple: Our contention is the working day is 8 hours, and that if they work overtime 8 hours, it is another working day, and if the work overtime another 8 hours it is another working day.

Mr. Bell: In order to get that construction, you would have to have in there "as new days"; it says "a new day."

Mr. Whipple: They place the working day as an 8-hour day. It says, if you work overtime you have to pay a pro rata. The fact is if you work 16 hours you have to pay two lay days; if you work 24 hours you have to pay three lay days; but if you only work your 8 hours and then lie idle until the next day, then you only have to pay one day. That is the interpretation which we put upon this contract.

Mr. Bell: But that is assuming that you divide 24 hours into three working days.

Mr. Whipple: Mr. Bell simply says this, and there does not seem to be any logic in the suggestion, whatever, if you work 8 hours you have to pay $302.50; if you work 16 hours you have to pay $302.50 for the same thing; in other words, he gets twice as much for his money working at night as he does in the daytime.

Mr. Bell: But Mr. Whipple assumes that we take 24 hours, and he says that in 24 hours there are three working days. In 24 hours there is one working day, namely, a working day of 8 hours, as is specified here; if there is any overtime worked then that is

77 to be counted as a new day. You cannot say that in 24

hours there are 3 working days; there is but one working day; the other 16 hours constitute what is designated here as a new day.

The Court: I can see quite clearly what you mean, but I find it rather had to agree with you. I am willing to hear any testimony you may offer that might explain this clause if it is held to be ambiguous. But reading that contract I myself should say that it means for every hour over the 8 hours you work they should receive one-eighth of the amount. I think that "a new day" is not so obscure an expression as you make it out to be. You could not regard the running over for an hour as new days.

Mr. Bell: That is what I shall attempt to show by the custom, your Honor.

The Court: I say I am willing to take the testimony on that matter, and if the Court determines that this is obscure and that it needs explanation we will have the testimony in the record to explain it. My present view is that it is not obscure and that it means what it says, and that for each hour overtime it shall be in the proportions of 8 hours a day.

Mr. Bell: I can take the testimony then, your Honor, subject to that?

The Court: Yes.

Mr. Bell:

Q. Is it not a fact that your general custom and the general custom in ship-yards about there is that if overtime is worked above 8 hours, that regardless of the amount of overtime which was worked you charge them with another lay-day?

A. In accordance with the amount of time they worked.

Q. But is it not a fact that if they worked 8 hours——

A. If they worked 8 hours overtime they would pay one overtime lay-day.

Q. Suppose that instead of working 8 hours overtime they worked one hour overtime.

A. They would pay one-eighth of a lay day.

78 Q. Was that the custom there?

A. Yes sir.

Q. Is it not the fact that if they worked any overtime at all they would pay another lay day, regardless of the amount of overtime?

A. The usual custom is to be a little more liberal in our enforceing of these charges than to confine it down to one hour; I can state the reason for having that applied in this here case: Mr. Doe and Mr. Cave had expressed themselves as desiring to work possibly the 24 hours through and that they would work various shifts; in other words, they would work one crew 8 hours and they would go home and they would put on an entirely new crew for the next 8 hours, and the third crew would come on and work the third 8 hour day within the 24 hours. You can readily see that we, conserving the interests of our Dry dock in its earning capacity would have to charge them three days in 24 hours. That is the reason that was put in this particular contract, stipulating that it should be paid

pro rata according to the time worked; if they worked one hour overtime it would be one-eighth of a day.

Q. Aside from this contract, Mr. Hubbard, what was your general custom in regard to charging for overtime?

A. Practically the same as I have stated except, as I have said, we are a little more liberal in making the charges, we will confine it to a quarter of a day. If they work one hour overtime we won't mention it, or probably an hour and a half; they could work probably 9 hours or 9 hours and a half, in putting on a propeller, or something like that that there would be a little delay on; rather than make a charge for it we let it go. If it runs beyond the quarter of a day we will probably charge for half a day; probably they had the use for a full half day and we would charge them half a day, or a quarter of a day.

Q. That is, if they worked an hour overtime then you would not charge them at all?

A. No.

79 Q. Suppose they worked 16 hours?

A. We would charge them one lay day more.

Q. Had you ever prior to this time charged for three days?

A. Yes, in rare instances. It is very seldom that a vessel will work the 24 hours through. I do not think in this case the work on the "Yucatan" was carried on three days in 24 hours.

Q. Suppose that they worked 18 hours what would be your charge?

A. Well, that would be two days and a quarter.

Q. And you would charge them in that case for the two hours.

A. Yes, sir.

Q. Now, that was the "Yucatan"; had you done that with other vessels which had been there and worked 18 hours?

A. Yes; that was a common practice.

Q. And you are sure it was not your custom, Mr. Hubbard, there, to charge for the working day a certain amount, and then if they worked overtime, regardless of whether they worked 5 hours or 10 hours overtime, to charge them one more lay day?

A. I am sure the charge is based on 8 hours being a day's work on the dock. You can readily understand a man would come to our dock with a ship that would require a day and a half's time to do on the dock, with the best of equipment and so on; if he could go on and do it in one day without an overcharge time, he would readily pay the overtime of a few men there to carry on the work for 16 or 18 hours and get it done and get away for one day's dock charge. We would be constantly called upon to work nights, our crew would be demoralized and run down by staying up nights, and we would get no earnings for our dock. It is necessary that that charge must be made to protect ourselves.

Q. Now, referring to the bill of June 26th, which is the first one in dispute, you have it there, 5 7-8 lay days, at $352.50, $2070.94. Have you got a time card there so that you can tell us just

80 how you arrived at that?

A. No, sir, I have not.

Mr. Whipple: On the bill here it says "Labor" and gives the number of hours, the rate per day and the amount. These bills have been approved. That is practically a time card.

The Court: What is the disputed item in that bill?

Mr. Whipple: There is a disputed item in this bill as to dockage charge only.

Mr. Bell: Yes, as to the dockage charge. The question is how they arrived at that figure for the dockage charge.

Mr. Whipple: I would like to say here, if your Honor please, that in order to straighten this matter out, Mr. Bell maintains here—and this is with reference to his putting on any testimony to explain this matter, he claims that after the first 8 hours are up that another lay day runs for the 16 hours; now, as a matter of fact, he has never paid anything for it; he has never paid us for anything except 8 hours a day. All the overtime, as shown on these bills of June 26th and July 3rd, have never been paid for—as to overtime. On June 26th we figured it up from June 18 to June 24: That was a week of seven days, eight hours a day, 56 hours; then the overtime was on Monday, 14 hours, Tuesday 14 hours, Wednesday 12 hours, Thursday 12 hours, and Friday 2 hours; the overtime was 54 hours; that never has been paid for at all.

Mr. Bell: That is true, your Honor, because the charge is we have to pay 2 days.

The Court: Well, if that had been paid, Mr. Whipple, probably none of us would have met here to-day.

Mr. Whipple: That is exactly so, your Honor. He has never paid anything on the overtime at all. He states, as I understand him, that the first 8 hours is $352.50, and the next 16 hours, $302.50; but none of this has ever been paid at all, although some of them are over 16 hours. For instance, there is an 8 hour
81 day on June 19th, and there was overtime worked from 4 p. m. in the afternoon to 7 a. m. the next morning, 14 hours; that made 22 hours that day.

The Court: That is not his contention. He contends that the next 16 hours after the first 8, he is entitled to pay for at the rate of one day and not two days. Your contention is that he must pay on that day at the rate of 1 6-8; with that, I am inclined to agree, but Mr. Bell is entitled to present his views in the matter. Those bills show the claimed overtime on each day, do they?

Mr. Whipple: I see that the bills which they have do not show it.

The Court: That is what he was trying to get from the time card, the amount of overtime as to each day. Is that not it, Mr. Bell?

Mr. Bell: Yes, your Honor.

The Court: And is that true of the bill of July 3rd, also; have you a memorandum showing the overtime in each 24 hours?

Mr. Whipple: Yes, your Honor, we can put these in; they show exactly the time charged.

Mr. Bell:

Q. Mr. Hubbard, at what time did the working day begin in the morning?

A. 8 o'clock.

Q. Are you sure it was 8? Wasn't it 7?

A. 8 o'clock.

Q. Then, after 8 hours had run, suppose that the 4 hours between the 8 hour and a 12-hour day, suppose that work was done during those four hours, would that be counted as a lay day, would you pro rate that as a lay day?

A. I don't get your meaning, exactly.

Q. Let me state it this say: Ordinarily there is the day time and the night time, 12 hours each; the working day is 8 hours; that is less than the hours of the day; now, suppose that you worked the full 12 hours, would you charge for those 4 hours dockage there?

A. Most assuredly, we would charge half a day overtime.

Q. In other words, this clause, in your opinion, did not apply simply to working overtime, but applied to the dockage time?

82 A. Well, it would apply to working time as well. We employ union labor there, and those are union hours, 8 hours per day; they demand double time for overtime, anything over 8 hours that they work. You can make an arrangement, as was made with the "Yucatan," you can put on an entirely new crew and they can begin their day at 5 p. m., for instance, when the usual working day ends, and that crew can go on and work 8 hours on single time.

The Court:

Q. Whether night or day?

A. Whether night or day. That arrangement can be made and was made in the "Yucatan" case.

Mr. Bell:

Q. Suppose you have one crew on for 8 hours, and then you wait 4 hours and then put on another crew for 8 hours, what will you charge them then?

A. We would not charge them unless work was carried on on the dock; they are entitled to the whole 24 hours on the dock, with the privilege of working 8 hours for one lay day charge; but as soon as they start work on another 8 hours, it begins as another lay day. The working lay day is finished when 8 hours have expired.

Q. But if they wait 4 hours and they then begin another 8-hour day, that means, does it not, that they run into the third 8-hour day?

A. No, it would not necessarily; it only applies to the time they are working on the dock. Those charges do not apply unless you are carrying on work upon the vessel.

Q. In other words, in that situation that I suppose to you, working from 8 o'clock in the morning of a working day and then waiting 4 hours and then working another 8 hours, in that case you don't count the first four hours as one lay day and 4 hours of the third as another one?

A. No.

Q. Is it not a fact that the way it worked was this: That this clause in the contract applied simply to work, and that as to dockage, the dockage was to be $302.50, which was to cover 12 hours?

A. The paragraph there contemplates permitting work to be carried on — the vessel a usual working day of 8 hours.

83 Q. That is as to work?

A. Yes, and if overtime work is carried on or desired, such overtime will apply as a new day; now, if 8 hours constitute one day, and it is carried on 9 hours, that one hour will apply as a new day again, won't it, under your interpretation of it?

Q. And you are positive that that was the meaning of this clause?

A. Yes, sir.

Q. When was it that the "Yucatan" went off the dry-dock?

A. She was dry-docked twice.

Q. The first time was June 17th?

A. Yes.

Q. When did she come off?

A. I think Mr. Whipple has that record, she was launched July 3rd.

Q. During the time she was on the dock there, from June 17th to July 3rd, where was the "Archer," the vessel that had been on there?

A. She was lying at our wharves repairing, making certain installations and alterations there.

Q. You were doing that work on her, were you?

A. Yes, sir.

Q. And you were using your equipment for that work, were you?

A. Yes, sir.

Q. Were they making any repairs on the "Archer's" plates after she had gone off the dock?

A. No, sir.

Q. What was the nature of the repairs made on her while the "Yucatan" was on the dock and she was alongside?

A. The vessel had been a sailing vessel, and a gas-engine installation was being made, so as to give her auxiliary power. It was necessary to fit a new stern post; some of the plating had to be cut out around the stern post, so as to allow room for the propeller to turn there, the same would be arranged in a steamer. That was the character of the work. After she came off the dock, that installation was completed. And there were alterations in the

84 houses separating the engine room from the cargo space; decks were laid, and so forth, where it had been cut open to install the engine and get the engine in place.

Mr. Whipple: Mr. Bell, didn't you ask what work was done on the "Archer" while she was off the dock?

Mr. Bell: Yes, and while the "Yucatan" was on the dock.

A. (Continuing:) Later on he asked about the work that was on the dock.

Mr. Bell:

Q. I think you misunderstood my question. I don't care about what work was done on the "Archer" while she was on the dock; while the "Yucatan" was on the dock and the "Archer" was off the dock, what work was done on the "Archer"?

A. The bulkheads separating the engine room from the cargo hold, and relaying the decks which had been cut out to install the engine, and the completion of the machinery installation, the piping and so on connecting with the oil tanks.

Q. The stem post work was done while she was on the dock?

A. Yes, sir.

Mr. Whipple: If your Honor please, I don't care about being technical about this matter, but it seems to me that this is a part of their case in chief on their cross-libel; don't you think so, Mr. Bell?

Mr. Bell: I guess that is right, I will recall Mr. Hubbard on that.

The Court: Yes, that probably is true.

Mr. Bell: Your Honor, I simply have to check up the time on these bills now, and while I am doing that, Mr. Whipple can go ahead and examine the witness if he wishes to.

Redirect examination.

Mr. Whipple:

Q. Mr. Hubbard, you remember this contract which is in evidence here: I want to ask you if that is the ordinary character of contract which your corporation generally entered into?

85 A. Yes, it is. Some features of it are a little out of the ordinary.

Q. Do you generally do the work yourself, or not?

A. That is where this differs from the usual contract.

Q. That is what I mean: In what way does it differ?

A. It was intended to cover a condition where the owners were to do and to supervise the work themselves, and we were to furnish the use of the dock and the equipment and the men at a certain stipulated price, and the material.

Q. What is your general contract, your usual contract?

A. Usually specifications are made up stipulating what the character of the repairs are on the vessel, and we bid upon it in competition with other firms; if we are the low bidder, we have to carry out the terms of that specification; usually the specification covers fully what the owners of the vessel desire done. In many instances they bind the contractor by requiring him to pay demurrage of so much per day if he fails to complete the vessel within a stipulated time. On Government work, he is required to give a bond.

Q. Where was this vessel, the "Yucatan," at the time you entered into the contract?

A. She was at the Heffernan dry dock, at Seattle.

Q. She was not at your place at all?

A. No, sir.

Q. Had you been on the vessel at that time?

A. No, sir.

Q. Did you know how much work had to be done?
A. I did not.
Q. Did you know the character of the work?
A. Only as stated to me by Mr. Doe at the time.
Q. Did you have a vessel booked for your dry-dock after the "Archer" was to be finished?

Mr. Bell: That is objected to, your Honor, as being immaterial, irrelevant and incompetent, unless it was the "Yucatan."

86 Mr. Whipple: I am trying to show, if your Honor please, that there was another vessel booked which they sent away, in order to put the "Yucatan" on after the "Archer."

Mr. Bell: Well, I will withdraw my objection.

Mr. Whipple:

Q. Was there a vessel named the "Hind" there?
A. There was, yes, sir.
Q. What did you do with that vessel?
A. She was sent to the Seattle Dry-dock & Construction Company for dockage by us.
Q. For what purpose did you send her away?
A. In order to comply with the terms of our promise to Mr. Doe that we would dock the "Yucatan" immediately following the Archer. The "Hind" was booked by Mr. Billings in San Francisco, here. He does that continually. He notifies us whenever he books a vessel for dockage. That notification came to us subsequent to the agreement made by us with Mr. Doe that we would dock the "Yucatan" immediately after the "Archer." When we got notice from Mr. Billings that the "Hind" was to be sent there for docking, it was up to us to make arrangements to send her somewhere else, so as to not disoblige the owner and so we made arrangements to send her to Seattle.
Q. I would like to know, with reference to the amounts which were not paid, did you have any understanding with Mr. Cave as to what you should do with those, as to whether the matter should be put up to Mr. Doe, or not?
A. Well, I was considerably bothered at the time in connection with the matter. He had refused to comply with the terms of the agreement there as to payments. The situation was such that the vessel was in a condition that she could not be floated without completing the work. If we were not going to be paid for the vessel on the dock, it appeared as though we would have to go ahead and finish the repairs in order to get her out of the way and get

87 some vessel on the dock so the dock would be earning something for us. I was considerably bothered about it, and I went and talked to Mr. McMicken, our attorney in Seattle, and on his advice——

Mr. Bell: Just a moment. I object to any conversation, your Honor.

Mr. Whipple: Just leave that out, Mr. Hubbard.

A. (Continuing:) On his advice, I concluded to accept payment

on the basis Mr. Cave offered, but under protest, and upon the understanding that we would settle the disputed portion of the bill with Mr. Doe at a later date.

Q. I just wish to know the understanding you reached. This question was put to you on cross-examination: If the vessel was 8 hours on the dock, say from 8 a. m. to 5 p. m., which would allow one hour for lunch, and then was off 4 hours and then on 8 hours again, what would your charge be.

A. If it was taken off the dock, do you mean?

Q. No. The vessel is on the dock for 8 hours.

The Court You mean they are working on her?

Mr. Whipple:

Q. I mean it is on for 8 hours, and the work is being done for 8 hours; then work is stopped for 4 hours, and then work commenced again for 8 hours; the vessel being on the dock all the time; what would be your charge?

A. If there was 8 hours consumed in the second period that the work was carried on, it would apply as a new day entirely.

Q. How many days would you charge?

A. If there was 16 hours of labor carried on there, we would charge 2 days. For the 4 hours there would be no charge.

Q. And how about the next 4 hours?

A. There would be no charge for the next 4 hours if there was no work carried on.

Q. At the time these bills came up for payment, do you
88 remember whether Mr. Doe or Mr. Cave, whoever was there, made this claim, that 16 hours was a day?

A. I never heard that contention.

Q. You never heard that at all?

A. No.

Recross-examination.

Mr. Bell:

Q. What was said with reference to that at that time, Mr. Hubbard, what was the objection?

A. I think Mr. Cave said he did not think it would be right for him to pay that overtime dockage.

Q. Did he give any reason why it was not right for him to pay it?

A. Well, no, not anything tangible.

Q. Did he give anything intangible?

A. I drew my conclusions as to the reason for it. That is about as near as I can get at it.

Q. But he did not tell you why the charge was improper, at all?

A. He did not think they were right, and he was not going to pay them.

Q. Did he tell you in what respect they were not right?

A. No, he did not say particularly; he did not think it was a fair and equitable charge; something of that kind.

Q. Now, as to the last question Mr. Whipple asked you, if you

worked 8 hours and then 4 hours off and then 8 hours on again, and then the next 4 hours no work, you say you would charge for 2 days?

A. Yes, sir.

Q. Now, suppose from 8 o'clock in the morning you worked for 3 hours and then you lay off until after 5 o'clock—say until 7 o'clock, and then you begin again and work for three more hours, then you lay off for another time and you work again for 2 hours, making 8 hours scattered all along the 24, how much would you charge in that case?

A. We probably would only charge for one day for that.

Q. You would only charge one day?

A. Yes, sir.

89 Mr. Whipple:

Q. You say "probably." What would you charge under that contract?

A. Under that contract I think we would charge for about 2 days.

Q. How could you?

A. We would consider that we had to keep up power for them to work the 3 hours, and that we were put to a lot of expense and inconvenience, and we probably would consider the three hours that the work was carried on as one day; then to give a liberal interpretation of it, if such condition was to come about that they would want to start in at 3 or 4 o'clock in the morning to do 3 or 4 hours more work, and we would have to get our engineers down and pay them overtime to get up steam and have power and everything ready for delivery, the chances are we would charge them for 2 or 3 hours work there as another day.

Mr. Bell:

Q. In that situation would not all the reasons apply to the case where you work from 8 o'clock in the morning until 5 and then you lay off 4 hours and then work 8 hours again?

A. I don't think a condition of that kind would ever arise. If a man has overtime work to do he carries it right on with a view to the interests of the plant as well as his own, permitting them to keep the men there when he has steam up and not let everything go down and then come on at 2 or 3 o'clock in the morning and start in again; that would be inconsistent.

Q. You would charge him for 2 days then?

A. Yes, sir.

Q. Whose vessel was the "Hind"?

A. It belonged to Hind, Rolph & Co.

Q. When had you made the agreement to put her on the dock, before or after you made the agreement as to the "Yucatan"?

A. Our usual agreements are with vessels of that character——

Q. I mean this particular time.

A. It applies to this vessel the same as all other vessels, unless a specific agreement is made, that they be docked upon ar-

90 rival, immediately upon arrival, or to take the turn in which

they arrive. If they arrive and some vessel has got there one hour before them, that vessel has preference.

Q. When did you make the agreement with Hind, Rolph & Co. to dock the "Hind"?

A. I think at about the same time that the agreement was made with Mr. Doe regarding the "Yucatan," although I had made the agreement regarding the "Yucatan" at Seattle, and Mr. Billings had made the agreement with Hind, Rolph & Co. at San Francisco; while the correspondence advising me that the vessel was booked for docking was passing up there, the agreement was made with Mr. Doe, and they would conflict; in order to make good what Mr. Billings had promised, we sent the vessel to the Seattle Construction Company and had her docked there.

Q. At what date did you first know that the agreement had been made to dock the "Hind"?

A. She was first booked on May 20th.

Q. What do you mean by "booked"?

A. Immediately that I get notice that a vessel is coming to dock, it is entered on our daily yard record, of which this is a copy from our office; it is made up daily covering the work that is going on and the vessels that are booked for docking and the turn in which they are to be docked. I have this notation here: "Schooner 'Robert R. Hind': dock, clean and paint; caulk garboards and top sides; follow the 'Archer.'" Mr. Billings had made the contract in San Francisco that she should go on there following the "Archer."

Q. You say Mr. Billings had made the contract in San Francisco that the "Hind" should go on the dock following the "Archer"?

A. Yes, sir.

Q. Do you know when it was he made that agreement?

A. Well, it takes about two days for letters to pass up there; probably about two days prior to that, about the 18th, probably the same day that the agreement was made with Mr. Doe.

Q. And you sent the "Hind" away in order to put the "Yucatan" on immediately?

A. Yes, sir.

91 Q. You said that in the ordinary contract you had for repairing a vessel there, there is a provision that if you do not repair her within a certain time you will have to pay demurrage: Is that true?

A. Yes, that largely prevails.

Q. There was no such agreement in this case, was there?

A. No, sir, we were not repairing the vessel.

Q. It is usual also that a bond be put up to cover that demurrage, is it not?

A. Usually, yes, and particularly with the Government.

Q. That was not done in this case, of course?

A. No, sir.

Q. How did it happen that in this case you did not furnish the labor, as you usually did?

A. We gave them the labor they asked for.

Q. How did it happen in this case that they did their own supervising?

A. That is what Mr. Doe wanted. He did not want us to undertake the job. We were not asked to give an estimate as to what it would cost, or anything of that kind; he wanted to do it himself. We agreed to give them the labor at 15% advance over the cost to us.

Q. Was anything said as to why they wished to do it themselves?

A. No, but I imagine he wanted it for economical reasons and thinking possibly they could make the repairs to suit them at a less cost than they could go out in the market and contract the work for.

Q. If you had supervised the repairs—your company—who would have been your supervisor?

A. I would have been, myself.

Q. Is it not a fact, Mr. Hubbard, that you were supervising the repairs on the "Archer"?

A. Yes, sir.

Q. And is that not the reason Mr. Doe was to supervise his own work?

A. Oh, no. Often we carry on work on 7 or 8 vessels at one time.

Q. You said that this contract was like the ordinary contract that you made, except for the fact that Mr. Doe was to do the
92 supervising himself?

A. Yes, sir.

Q. In your usual contracts, do you put any provision in, such as this clause here, about contemplating the work to be carried on — the vessel, for the usual 8 hours, and so forth?

A. Yes, that is common.

Q. That is usual, is it?

A. Yes, sir.

Q. Have you any other contracts with vessels, for repair of vessels?

A. Do you mean any in force at the present time?

Q. Yes. Have you any other contracts here?

A. No, I have not any forms here. I have them in our records at the yard. I brought nothing of that kind with me.

Q. You said you talked to Mr. Cave and it was arranged between you that the disputed items should be settled with Mr. Doe?

A. Yes, sir.

Q. What did you mean by the word "settled"?

A. Mr. Cave had to deal through Mr. Doe, who was not in a position to make any agreements or concessions. I suppose on the advice of Mr. Doe, he had protested these bills, and we left it for settlement with Mr. Doe when we could see him.

Q. In other words, it was to be fought out with Mr. Doe?

A. Yes, sir.

Mr. Whipple: Mr. Bell, did we put in these bills for overtime?

The Court: You offered them in evidence, but they were not marked by the clerk.

Mr. Whipple: I think we had better put them in.

(The documents were here marked "Libelant's Exhibit 4.")

Further redirect examination.

Mr. Whipple:

Q. Mr. Hubbard, I show you these statements; this shows the times that are charged up for the dockage; I would like to ask you whether work was done upon the vessel at all times that are charged up there?

A. Well, I could check this up with my own personal record here; this is from our office *it* it?

Q. Yes, that was given to me.

A. Well, that would be an exact transcript from our records.

93 Q. You stated that if the work was done from 8, say, until 11 in the morning, and 7 to 10 at night, and 2 hours at other times, making up the 8 hours, you would charge them two days?

A. Yes, sir.

Q. Could you have done that under this contract?

A. Under this contract, I don't think so.

Q. Why did you say that you would charge them 2 days?

A. I say ordinarily we would do that, because of the inconvenience that would be entailed.

Q. You mean that that is a very unusual way of doing it?

A. It is a very unusual way. If they were going to work overtime, they would continue right on after the day had been completed.

Q. That is, you mean to break up the day in that way is very unusual?

A. Yes, it is very unusual.

Q. And you would like to make a different arrangement under those circumstances?

A. Yes, sir.

Further recross-examination.

Mr. Bell:

Q. Mr. Hubbard, referring to this clause in the agreement which reads as follows:

"Above rates contemplate allowing work to be carried on upon the vessel the usual working day, 8 hours out of each 24 hours; and in case you desire to work overtime, the same lay day rates will apply upon such overtime worked upon the vessel as a new day and must be paid for pro rata according to such overtime in which work is carried on."

Referring to that clause, I want to ask you, Mr. Hubbard, directly, whether or not that clause was not put in there for the purpose of regulating the labor on the vessel, and had nothing to do with the dockage charge?

A. No, it was not. It was particularly to regulate the dockage charge, because it was indicated, as I stated before, here, by Mr. Cave and Mr. Doe, that they would probably carry on work considerably over time. If permitted to do that, you can readily

94 see that they would shorten the dockage earnings of our dock very materially, if we did not make a charge of this character. They would want to go right on and work 3 days in every 24 hours.

Q. It did not apply, then, as to the charges for labor?

A. No, sir, it specifically refers to the docking.

(A recess was here taken until two p. m.)

Afternoon Session.

LOUIS A. DARE, Called for the Libelant, Sworn.

Mr. Whipple:

Q. Mr. Dare, were you employed by the Hall Brothers Marine Railway & Shipbuilding Company in May and June, 1911, at the time that these repairs were going on?

A. Yes, sir.

Q. What was your position with that company?

A. I was secretary and treasurer of the corporation; as an actual fact, I was the bookkeeper, I had charge of the office.

Q. Did you have charge of making up the time that would be charged against the repairs on this vessel?

A. I did.

Q. Did you go over that time with Mr. Cave at the end of each day?

A. I did. It was not at the end of each day, it was on the following day; the following morning; we did not get our reports in until the following morning.

Q. And on the following morning you went over the reports with Mr. Cave?

A. Yes, daily.

Q. I show you "Libelant's Exhibit 4", which contains the number of hours charged against the steamer for dockage; did you make up that list?

A. I did.

Q. It was made under your supervision, was it?

A. Yes, sir.

Q. Now, I want to ask you if the time that is charged against the vessel there is time during which work was going on on the vessel?

95 A. Yes; those were my instructions, to charge only for working hours.

Q. You will notice there that every day is charged 8 hours, and then on the right hand column, looking at the paper, there is charged for overtime.

A. Yes.

Q. On the left hand column it is all 8 hours, is it not?

A. Just the straight time, the 8 hours.

Q. Has the libelant in this case ever been paid anything for the overtime?

A. As far as I know they have received nothing for the overtime, with the exception of the first bill.

Q. Never mind that one; I am speaking about this one.

A. Nothing.

Q. Those two items refer to the bills of June 26 and July 3, do they not?

A. They do. We have not received anything on these two bills, that I know of.

Q. Now, on the theory of the respondent, that the 16 hours past the 8 hours, after they had been on 8 hours that was one day, and that the 16 hours constituted the second day, have you ever received anything for the 16 hours?

A. No, sir.

Q. Have you received anything for anything beyond 8 hours?

A. No, sir. In fact, we have not received anything for any of this overtime.

Q. Did Mr. Cave agree with the time here that the work was being done on the vessel?

A. Yes, I believe we agreed daily as to the actual working hours.

Q. He agreed that the work was being done upon the vessel during those hours?

A. Yes, sir.

Q. Later, you billed this up, didn't you?

A. Yes, sir.

Q. And then with whom did Mr. Cave take the matter up, if with anyone?

A. With Mr. Hubbard.

Q. Have you ever had any vessels on that dry-dock that worked 24 hours, on which work was prosecuted 24 hours?

96 A. I don't recollect any just now. We had several where we worked overtime, or nights, but I cannot state exactly if they ever worked on any 24 hours straight.

Cross-examination.

Mr. Bell:

Q. When vessels worked overtime, as you say some did, how was that overtime charged for?

A. Usually on the basis of 8 hours constituting a working day.

Q. That is, if they worked 2 hours over the 8 hours, what charge would be made for that?

A. A quarter of a lay day.

Redirect examination.

Mr. Whipple:

Q. Did you extend these bills, Mr. Dare?

A. Yes, sir.

Q. Take the question that was asked of Mr. Hubbard this morning: Suppose the work on that vessel was prosecuted, it being on the dock for 24 hours, but work was prosecuted on it from 7 to 10 in the morning, and 8 to 11 at night, and 2 to 4 the following

morning, that is, 8 hours work in that way during the 24 hours, what would be charged on that?

The Court: Does that condition arise here?

Mr. Whipple: It does not.

The Court: Then why worry about it? We spent all this morning in taking testimony that should have been taken in 20 minutes; you consumed 2 hours. What is the use of litigating questions that are not in dispute?

Mr. Whipple: I understood that was in dispute, your Honor.

The Court: That was just a moot question, what would have been done if such a condition existed.

Mr. Whipple: That is right, your Honor. That is all. Libelant rests.

97 CHARLES P. DOE, called for the Respondent, sworn.

Mr. BELL:

Q. Mr. Doe, what is your occupation?

A. I am president and general manager of the North Pacific Steamship Company.

Q. Did you occupy that position at the time that repairs were made on the "Yucatan" on the dock here in question?

A. Yes, sir, I did.

Q. You executed the memorandum or contract which has been introduced in evidence here?

A. Yes.

Q. When did you first see Mr. Hubbard with reference to putting the "Yucatan" on the dock?

A. I think it was on the 18th of May, 1911.

Q. Where was it you saw him?

A. In Seattle.

Q. What conversation took place between you and Mr. Hubbard at that time?

A. I telephoned to find out if he was in his office and he said he was; I went up to see him; I asked him if he could dock the "Yucatan." He asked me some questions, about what her general size was, and so forth, and he said that she was about the capacity of his dock, and he said he could dock her; I asked him if he would; he wanted to know when we wanted to get on, and what we were going to do. I gave him a brief outline of it. He said that he could take her on; I said "All right."

Q. Was anything said in that conversation with reference to the time when the "Yucatan" was going on the dry dock?

A. Yes, sir. We had a general conversation as to what the steamer was going to do, and the character of the repairs to be made, and the conditions under which we wanted to make them.

Q. In that conversation was anything said as to the details of the conditions which you mentioned? You said you had a conversation with reference to general conditions under which the vessel was to be placed there: What did you refer to by that?

98 A. The amount of repairs, and who was to make them, and the system under which we wanted to make them; in other words, we did not want him as a dock-yard man to make the repairs, we proposed to do those ourselves. We wanted to use his facilities.

Q. Was anything said as to when the vessel was going on the dry-dock?

A. Yes, that was the crux of the whole situation, we were in a hurry.

Q. What was said in reference to that?

A. He said he had the barkentine "Archer" on the dock, that he was doing a pretty big job on her, but he was getting along pretty well, and as soon as the "Archer" went off we could have the dock.

Q. Was anything said with reference to when the "Archer" should go off the dock?

A. Yes. We were a little bit particular about that, because if we could not get on the dock, we knew we would be late in getting our repairs completed. We asked him, and he stated he would be able to finish her up in about a couple of weeks, or so, and finally stated as a date the 4th or 5th of July; he was not quite sure about that——

Mr. Whipple:

Q. You mean June, I suppose?

A. I mean June, not July.

Mr. Bell:

Q. Was anything said in that conversation with reference to the charter party between the North Pacific Company and the Western Alaska Company?

A. I don't remember that we mentioned the name of the Western Alaska Steamship Company, but I told him we were under obligations to have her ready for an Alaskan trip to Nome, not later than the 20th of June. Later on in the conversation, I told him what our arrangements with the Alaska people were with reference to financing; it is possible I did not say anything to him with regard to the charter, itself, with the Alaska Company, but I think I must have done so.

99 Q. And when did you see Mr. Hubbard again after that conversation?

A. The next morning.

Q. Was that at the time the written agreement was signed up?

A. Yes. At the first conversation, Mr. Hubbard said he would draw up a little memorandum and have it ready for me if I would come in and sign it.

Q. Did you have any further conversation at the time that the memorandum was signed?

A. Merely reiterating what we had said before about our hurry for the boat and the amount of repairs we were going to do, and some little talk of that kind, some discussion as to working conditions on the dock, and a few little details in connection with the contract.

Q. In either of those conversations, Mr. Doe, was anything said about any definite date that the "Yucatan" should go on the dock?

A. Nothing further than Mr. Hubbard's assurance that he would be through with the "Archer" and he would get it there by the 4th or 5th of June. He said that as being the final time. He told us he had considerable trouble with the "Archer" and the job was lasting longer than he expected, but he was confident he would be through with her at that time. Depending on that promise, we made the arrangements with him rather than to take the ship to some other dock.

Q. In either of those conversations, was anything said with reference to the character of the tools, and the accommodations, and so forth, to be furnished for the repair of the "Yucatan" while at that dock?

A. Yes. It was understood at all times that we were to go in and use the yard practically as if we owned it, other than the fact that he wanted to finish up the "Archer" before the "Yucatan" was docked. After that, we were to have the use of all the equipment he had. He further stated that if he did not have sufficient equipment, he would get some, referring at that time to air tools and other things he might be short of. They had drill presses and all the ordinary stuff. It appeared he thought he might be short some small tools, air tools and things of that sort, and he would get those if it were necessary to do it.

Q. And on the 4th of June what was the situation with reference to putting the "Yucatan" on the dock?

A. I was not at the dock at that time, but I am advised that the "Archer" was still on the dock.

Mr. Whipple: We object to that, your Honor.

Mr. Bell: Yes, that may go out.

The Court: It is conceded that the "Archer" was on the dock until the 17th. Let us try what is in dispute and let the rest go.

Mr. Bell:

Q. With reference to the bills which are in dispute here, Mr. Doe, as to dockage, the first bill which is in dispute is that of June 26th; the dockage which is claimed there is for 7⅞ lay days, at $302.50 per day, or $2,382.19; referring to the clause in the contract which was mentioned this morning, that "the above rates contemplate allowing work to be carried on upon the vessel the usual work day, 8 hours out of each 24 hours, but in case you desire to work overtime the same lay day rates will apply upon such overtime worked upon the vessel as a new day and must be paid for pro rata according to such overtime in which the work is carried on," what, if any, was the understanding as to payment which was to be made for overtime that the ship was on the dock?

Mr. Whipple: We object to that, if your Honor please, the contract speaks for itself.

The Court: That seems to be true, that the contract sets forth the terms clearly enough.

Mr. Bell: Your Honor, I was pursuing the same course as this morning, assuming that that clause was ambiguous.

The Court: Well, if the court should determine this to be ambiguous of course this testimony may throw light on it, and in that view the testimony will be taken, subject to the objection of
101 the libelant.

Mr. Bell: Will you read the question, Mr. Reporter?

The Court: If he can state what was said in that behalf, we may be able to determine, if we have to, what the understanding was.

Mr. Whipple: Your Honor, does not that have to be determined from the words, themselves?

The Court: Yes, if they will bear the interpretation that is put upon them. They cannot put a forced interpretation on them. If the contract is not clear, they are of course entitled to explain it. I have not time to have an argument on that matter now; it is easier to make the record now than make it hereafter.

Mr. Whipple: The only thing I wanted to call your Honor's attention to was this, that according to their own interpretation, that the second 16 hours was not but a second day, they have not paid on that.

The Court: Even so, that would cut down the amount.

Mr. Whipple: But they have not paid anything on it.

The Court: I know that; a man doesn't have to pay more than he is bound to pay, even if he had not paid what he is bound to pay.

Mr. Bell: I will reform the question in this way:

Q. Was anything said in the course of the conversation on the 18th between yourself and Mr. Hubbard with respect to what dockage would be charged for the time during which work was carried on after working hours and while the ship was on the dock?

A. Yes, it was understood at all times that we were going to pay the ordinary charge for overtime, provided we worked overtime, and we told him we intended to work overtime.

Q. What was the ordinary charge?

A. It would be another lay day, providing we worked anything over or beyond the first day; if we worked into the period constituting a second day, we were to pay a second day's dockage.

Q. What, if you know, was the custom with respect to
102 charging for dockage for such overtime?

A. That is the custom, just what I have testified to, that if you use a second day you pay for it; in other words, you can, if you work long enough, pay two days' dockage within one period of 24 hours.

The Court:

Q. But not three?

A. But not three. I have never heard of three days being paid. I will say further that it was clearly understood that we were going to work overtime on this job, we were in a hurry, and so expressed ourselves to Mr. Hubbard at the time we started in; it was known all the time that we were going to do just what we did do.

Mr. Bell:

Q. How long were you there, or were you at Winslow at all during the course of the repairs?

A. No, I was not there; I finished my work at Seattle; Mr. Cave was at Winslow.

Q. Mr. Doe, what was the date you were to deliver the "Yucatan" to the Western Alaska Company under the charter party?

A. On the 20th of July?

Q. Are you sure as to that?

A. It may be June. The records are right there, Mr. Bell, some place. I should say, though, it was June. She was going to Nome, and the Nome season opens in June. I think they are allowed to pass through on the 15th of June; I think that is the time they are allowed to pass into the Behring Sea.

Q. Is this a copy of that charter party, Mr. Doe (handing)?

A. Yes, this is a copy, with the exception that there are some blank spaces here which were afterwards filled in with written dates. The wording is exact, with the exception that the dates are not filled out here.

Q. Refreshing your memory from that, can you tell on what date the vessel was to be delivered under that charter party?

A. Yes, it states here June 20, 1911.

Q. What was the charter rate to be paid for that vessel by the Western Alaska Company?

A. $275 per day at 24 hours.

103 Q. Was the "Yucatan" turned over to the Western Alaska Company, Mr. Doe?

A. Yes, sir, at a subsequent date.

Q. Was she turned over to them on the 20th day of June?

A. No, sir.

Q. Why not?

A. She was still at Winslow, Eagle Harbor, being repaired.

Q. On the 20th, was she in a condition to be turned over to them?

A. No.

Q. If the "Yucatan" had been able to go upon the dry dock upon June 4th, how much sooner would she have been delivered to the Western Alaska than she was in fact?

Mr. Whipple: If you know, Mr. Doe. Are you an expert in these matters?

A. I am an expert in these matters, but I was not present at Winslow while the ship was being repaired. I can only assume that she would have been ready by the difference between the 4th of June and the time she did go on, which was the 17th.

Q. Have you ever repaired ships yourself?

A. Yes, frequently.

Q. Have you ever done any jobs of this kind?

A. Yes, two almost similar.

Mr. Whipple: We object to the question, your Honor, unless there is some foundation laid for his judgment upon it.

Mr. Bell:

Q. Were you managing the disposal of the "Yucatan," Mr. Doe, at that time?

A. Yes, sir.

Q. Was there any other reason than that the vessel was not able to get off the dock on the 20th why she was not turned over to the Western Alaska Company at that time?

A. Had we been able to get the dock when we ought to have gone on, we ought to have been able to come off in time to turn her over. That was our original plan. So far as I know, the only fault was that we lost some 13 or 14 days in getting on the dock.

The Court:

Q. What time was she turned over?

104 A. I cannot say, your Honor. I think we have the records there. We can get that.

Mr. Whipple: You mean the time she was turned over to the charterer?

The Court: Yes.

Mr. Whipple: I don't know, myself. We turned it over to them sometime prior to that time, I think sometime in August.

Mr. Bell: I will prove that by another witness, your Honor.

Q. You don't know when she was in fact turned over to the Western Alaska, do you, Mr. Doe?

A. Not from memory, no. It can be found out from the company's records. I cannot testify to it now.

Cross-examination.

Mr. Whipple:

Q. Mr. Doe, you had some work done by Hall Brothers prior to the time of the "Yucatan", had you not?

A. Yes, they did a little job for us several years prior to that on another vessel.

Q. You had been to their yard, had you not?

A. Oh, yes, several times.

Q. You knew what equipment they had?

A. Not in the way of repairing steel vessels; I knew what they had in the way of repairing wooden vessels. The steel equipment had been put in there prior to my visiting the yard.

Q. What was the first vessel you put upon the dock?

A. The "Roanoke."

Q. Is she not a steel vessel?

A. Yes. They did not make any repairs to her; they simply cleaned and painted the bottom. That can be done on any dock, simply with paint and paint brushes.

Q. Is it not a fact that when you and Mr. Hubbard and Mr. Cave were together in the office, you stated to Mr. Cave what equipment they had, and Mr. Cave said, "If they have that equipment, I will agree to do the work"?

105 A. Referring to the dry-dock. I knew about that just as well as Mr. Hubbard did. I didn't know what about the steel equipment. Mr. Hubbard told us what he had there, and assuming that he spoke the truth, I asked Mr. Cave if he could do the work, and he said that "If they have those tools I can do the work."

Q. You stated in your cross-libel that time was of the essence as to when this vessel was to go upon the dock.

A. I believe so, yes.

Q. You also state that there was a definite time fixed as to when she should go on the dock?

A. With Mr. Hubbard, we had that understanding.

Q. You had a written contract drawn upon the 19th of May, didn't you?

A. Yes, drawn up the following day.

Q. You read that memorandum over, did you not?

A. Yes.

Q. You signed it, did you not?

A. Yes.

Q. Mr. Hubbard signed it in your presence?

A. Well, I don't know whether he did or not, but he signed it.

Q. He signed it?

A. Sure.

Q. That was the working agreement?

A. That was the working agreement which we entered into, yes, sir.

Q. If this matter of putting her upon the dock was of the essence of the contract and one of the important matters of the contract, why didn't you have it written on the contract?

A. Mr. Hubbard was not sure whether he could get her off on the 4th or 5th of June; I know enough about the kind of work which Mr. Hubbard is doing to appreciate the fact that he had to allow himself a little time, which he claimed he had done in setting his date so far ahead.

Q. Did Mr. Hubbard state to you he would absoluteiy put that vessel upon the dock, or did he state as an opinion that he would put her upon the dock possibly between the 4th and the 5th?

A. Mr. Hubbard did not state it in any way that you could construe it as a guarantee that he could do that; he gave it,

106 however, as his opinion, and he was positive he could do it; but he did not give us any guarantee to that effect, not as such.

Q. That is the reason it was not put in the contract?

A. I don't know why Mr. Hubbard did not put it in there. He understood the situation perfectly, and we took it for granted that Mr. Hubbard knew what he said, that he would get her out on the 4th or 5th. He had a lot of trouble with the "Archer," but he thought he would get away with her and could see his way perfectly clear. We did not ask him to bind himself when he gave us his assurance. That was the proposition he made.

Q. His proposition was to put her on immediately following the "Archer"?

A. Well, he could not put her on until the "Archer" was off, but he gave us such assurance that we felt perfectly safe in saying "Go ahead."

Q. You stated, Mr. Doe, that the second 16 hours was always a lay day.

A. If used.

Q. That is, after the first?

A. A day on the dock is divided into two parts, one being the original day which you use, and then if you work over that time, you are liable then for an additional day's dockage. You can work as much or as little of the time as you please, it still constitutes a second day if you go past your first day. A dock day, ordinarily, is from 7 o'clock in the morning until 7 o'clock at night. A labor day for a mechanic consists of 8 hours, whether it starts in at 7 or 8 or 10, he works 8 hours for you and after that he gets overtime.

Q. This bill of June 19, 1911, I understand that bill was O. K.'d by Mr. Cave?

Mr. Bell: Yes, I think he O. K.'d that.

Mr. Whipple: The bill of June 19th there was no dispute about.

Q. I show you this bill; the first item on the bill, "Haul, 10 a. m. to 6 p. m., $705." That was 8 hours, and was in accordance with the contract, was it?

A. Possibly 24 hours; we are entitled to 24 hours on the
107 dock for $705, provided we did not do any work over and above the 8 hours.

Q. This bill shows $705; that is for hauling and for 8 hours. There is a charge for $44.06 for work done from 8 p. m. to 9 p. m., 1/8 of a lay day. That bill has been paid. Just take a look at that, will you please? Did you ever make a claim for a credit for 1-16 instead of 1-8 there?

A. We would if this thing ever came to an issue. This got by our auditor. This particular item was approved by Mr. Cave inadvertently, and it got by our auditor down here. We afterwards thought that it was a small matter, and we didn't bother with it. We refused to pay subsequently on two occasions where the amount was charged. We are really entitled to a refund on this. This bill was paid by draft. It passed through. At the time the text of that bill got down to San Francisco, it almost became ancient history, and we didn't say anything about it.

Q. It was paid on the 20th.

A. They were all paid in Seattle. The documents did not get to San Francisco until sometime later. The item got by Mr. Cave and also got by the auditor. That is the reason this was paid; the others were refused.

Q. You did not ask for a credit?

A. Not yet.

Q. You never have, have you?

A. I don't think so. When it was put up to me, I said, "It already

has been paid, we don't say anything about what has been, we will stand on what is."

Q. Is it not a fact that when the second bill came up, that is, the bill of June 26th, which was for work from June 19th to 26th, that you commenced to have your trouble with the local inspectors up there, and is not that the reason you claimed your overtime?

A. Oh, no, not at all. Our trouble with the local inspectors practically began the day we put the ship on the dock. I will explain a little further about that and say we knew we had a great deal of work to do on the vessel, and we knew that all of the work had to be done in connection with the local inspectors. Up to the time the ship floated, the inspectors were there passing on various
108 things which came up and which were within their province. We never had any more trouble on one day than on another. Things were coming every day. We always had more or less trouble.

Q. When did you first make your application to the inspectors to inspect that vessel?

A. I don't know. Mr. Cave can testify to that. The inspectors were instructing us as to the ship all the time that the ship was on the dock; we had them in consultation with us right along. The final application for inspection would be made about the time the repairs were completed. We had surveys on the hull, we had surveys on the shaft, we had surveys on the equipment going on all the time.

Q. About what time did the inspectors first come on the vessel?

A. I could not testify to that, I was not there.

Q. On the 21st of June, didn't you have some trouble with them about the boilers?

A. Not that I know of personally. Mr. Cave, our superintending engineer, who had charge of the job, can give you the exact date on that. That, however, would have nothing to do with the question of overtime—if I can make that remark, your Honor.

Q. I am saying that it was not until after you had trouble with the inspectors that you commenced to find any fault about the overcharge.

A. That might be a matter of bookkeeping; our bookkeepers are finding errors all the time, no matter what might be happening outside in the rest of the world.

The Court: Your interpretation of this contract is, if you work 8 hours that is a day.

A. Yes, sir.

Q. If you work any other time, it is another day, whether it is 8 hours or more than 8 hours?

A. That is it. We are liable for two days if we use any more than one.

Q. So that instead of being charged $44 for 2 hours overtime, you should have been charged $302?

109 A. Just one half of that; it is figured pro rata.

Q. I am asking you how you understood the contract. After you worked 8 hours, and then you work the rest of the day, or any portion of it, then that is another day, is it?

A. That starts another day. Your first day is gone; you cannot have the benefit of it.

Q. That is a different statement of the proposition.

A. I did not *intent* to say it constitutes another day. It merely starts another day. Under this contract, we would be liable for every hour which we use, because the contract says per hour.

Mr. Whipple:

Q. When did you first find out that there was something the matter with the tail shaft?

A. I cannot give you the exact date, but we knew it all the time; we didn't have to find it out.

Q. You didn't have to find it out?

A. No, sir. I could not tell you the date of the survey. We had the final survey to ascertain how bad it was.

Q. When did Mr. Birmingham go up there, the supervising inspector on the coast?

Mr. Bell: If your Honor please, I don't see the materiality of any evidence as to whether the inspectors were there, or whether they required more work to be done, or not, after she was on the dock, and all that sort of thing. If they did, it might add more time to the repairing before the work was completed, but it would not have any effect in putting the ship on the dock.

Mr. Whipple: I am talking about the delivery of the vessel. They say we delivered it sometime in August, which is quite true, and I am now attempting to show why.

Mr. Bell: We do not claim any damage because of the fact that the vessel was delivered at a particular time. The damage which Mr. Doe has been questioned on is the damage which accrued by
110 reason of the fact that they should have docked the vessel on the 4th and they did not do so until the 17th. I am going into the question with Mr. Cave if there were any other circumstances there which held up the vessel longer than she should have been held up.

Mr. Whipple: You do not claim any damage because she was not delivered until August, except the 13 days and the 4 days?

Mr. Bell: That is it.

Mr. Whipple: In other words, because she was not docked on the 4th, but was docked on the 17th—there are 13 days, and you claim damage for those 13 days. On account of equipment, there were 4 days' delay, which you figure, and you put that in at the charter rate.

Mr. Bell: That is our contention.

Mr. Whipple: Then the fact of the tail shaft, and the cement under the boilers, and all that does not make any difference.

Mr. Bell: It would seem to me so.

Mr. Whipple: It would seem so to me.

The Witness: That is all right, we have no claim on that.

Mr. Whipple: I thought they were claiming we put the vessel on at a certain time and delivered it on August 1st. I was trying to

show that the tail shaft was condemned, and it took a month to fix that.

The Witness: Your Honor, that is not a part of the claim. We know that. That was extra cost, and we paid all that. We are not making any claim other than for delay and for not giving us the facilities which they agreed to give. The additional work we did there, we knew we would have to do more or less of that work. That accounts for our haste in wanting to get her on the dock, in fact in being so urgent to get her on the dock at an early day.

Mr. Whipple:

Q. There is some claim here on account of the equipment a claim for 4 days' delay.

A. Yes, that is included in the claim.

111 Q. How do you figure that out?

A. I have not figured it. Our superintendent figured it out. He can testify to that directly, because he was on the ground at the time and knows exactly what caused the delay. I can tell you what he told me, but he is here and he can testify to it.

Q. Then you testify only as to the 13 days?

A. That is right.

Q. And you don't know anything about the other matter?

A. I only know about it by his report to me as manager.

Q. Mr. Doe, how long did it take to get the tail shaft fixed?

A. The tail shaft was built in San Francisco by the Union Iron Works; there was a contract on it. I don't remember how long it took them to build it. I should say, from my experience, that it was about a ten days' job to build the shaft. They shipped it up on one of the steamers.

Q. I mean to order it and get it up there.

A. We can give you the exact record on that if it is of value to you.

Q. It certainly is. You claim that the vessel should have gone on on June 4th.

A. June 4th or 5th.

Q. That is your claim?

A. Yes, sir.

Q. If it took a month to get that tail shaft up there, you would not claim you could get the vessel by the 20th?

A. No, but we could not discover that we needed the tail shaft until we had the ship on the dock. If we had the ship on the dock on the 4th, we would have discovered it exactly thirteen days sooner than we did. It would have taken a month in any event to get it, but we would have made the discovery that we needed it just 13 days quicker. You did not give us a chance to find out what we would have to do with the shaft.

Q. But you could not deliver that vessel on the 20th anyhow, could you?

A. Oh, no.

Q. Under no circumstances?

A. No, and we are not asking you to assume any responsi-

112 bility for what we did not do other than for those 13 days. We would have known about the shaft just that much quicker if we had the boat out of the water. That is our point exactly.

Redirect examination.

Mr. Bell:

Q. If you had discovered that the tail shaft needed repair, if the boat had been put on the dock on the 4th or 5th, and you had then discovered it, would you have been able to deliver her to the Western Alaska Company by the 20th?

A. I don't remember the exact time used in making and shipping up this shaft. Had we gotten her on the dock on the 4th or 5th, we probably might not have examined the ship the next day, or the day following; the point is we would have gotten to that part of the work just that much quicker if we had her where we could have done it. That time was absolutely lost to us, just as if we did not have it at all.

Q. Between the 20th of June, when the vessel was to be delivered under the charter, up to the time when she actually was delivered under the charter, did you receive any charter hire for her from the Western Alaska Company?

A. No, we did not.

Recross-examination.

Mr. Whipple:

Q. Didn't you say that you knew there was something the matter with that tail shaft right along?

A. Mr. Whipple, the tail shaft of every steamer has to be drawn every so often, and we expected we were going to have defects in this tail shaft. Naturally, we got to it as quickly as we could. We tried to get the inspectors to permit us to use the tail shaft for a voyage or for two voyages, but they would not do it.

113 HENRY CAVE, Called for the Respondent; Sworn.

Mr. Bell:

Q. Mr. Cave, what is your occupation?

A. Superintending engineer of the North Pacific Steamship Company.

Q. How long have you occupied that position?

A. About 8 years.

Q. What experience had you in that kind of work prior to that time?

A. I had been chief engineer of different vessels, and also shop foreman of repairs and construction work.

Q. At the time the "Yucatan" was repaired at Winslow on the Hall Brothers' dock, were you present during those repairs?

A. Yes, sir.

Q. Were you present at the conversation which Mr. Hubbard and Mr. Doe had on May 18th with reference to the repairs on that vessel?

A. Yes, sir.

Q. Do you remember what conversation took place at that time?

A. Pretty much, I believe, yes, sir.

Q. Will you state what was said in that conversation, as nearly as you can recollect?

A. The question arose, as Mr. Hubbard said this morning, I asked him the question as to being able to dock the vessel and to handle her, and as to the tools he had for plate work, and the different facilities about his shop and his plant. He answered me just as he said this morning, as near as I can remember. There was not any question in his mind but what he could handle the job. I laid out to him the amount and the nature of the work we had to do, having the vessel on the dock prior to that and having her surveyed I knew in very small detail what we were to do. Knowing that we needed the vessel to deliver her to the charterers on the 20th of June, I questioned him as to the time when the "Archer" would be off the dock. He said she would be finished up at least by the 4th, and we would be able to take the dock by the 5th of May—the 5th of June—not later than the 5th of June, as I understood it.

114 We were to go to his yard in a day or two providing the matter was accepted.

Q. Was anything said about the charter party which the vessel was under at that time?

A. Well, really, I don't know about that, but knowing that the vessel was to be delivered and that we were in a hurry to get her, I remember, as I can recall it, that that was part of the matter that was taken up, as to whether we should start on the job in order to get through. That was my question about when we could get on the dock.

Q. Did you know at that time that the "Archer" was on the dock?

A. Yes, sir.

Q. With reference to the equipment and the use of the dock, was anything said with reference to what part of the equipment should be used by the "Yucatan"?

A. Well, as I understood it, all of it, anything they had in the yard. We paid them for the privilege of going to the yard and using their tools absolutely.

Q. The vessel lay alongside the dock before she went on the dock for some, didn't she?

A. Yes, sir.

Q. And she went on the dock on the 17th; were you there at the time?

A. Yes, sir.

Q. Were you there during the repairs which were made on her?

A. Yes, sir.

Q. What can you say with reference to the equipment which was

supplied to you by the Hall Brothers' Company for repairing the "Yucatan"?

A. Well, the equipment was fairly adequate to the effort, if we could have had absolute use of it; but work was progressing on the "Archer" after she came off the dock—plate work—and we were not allowed absolute use of the tools, and could not get the tools to the ship as fast as we wanted them.

Q. What tools, in particular?

A. Plate-working tools, punchers and shears.

Q. At any time during the time the "Yucatan" was on the dock, was it necessary for you to wait for tools on account of their
115 being used on the "Archer"?

A. Yes, it was necessary for us to wait for materials. We could not get our plates, as I said before, as fast as we needed them.

Q. In what respect could you not get your plates, what prevented the getting of your plates?

A. Material being worked for the "Archer."

Q. The shears and the punchers which you mentioned, Mr. Cave, what were they used for, what was their use with reference to the plates?

A. For shearing and punching.

Q. Are they stationary objects?

A. Yes, stationary in the shop.

Q. Was it ever necessary for you to wait until the "Archer" plates got out of those before you could use them?

A. Yes, sir.

Q. What can you say with reference to the adequacy of the equipment which was supplied?

A. I don't quite get that. They could be better tools, and they could be much poorer tools.

Q. And the only criticism you have of the equipment and the tools, Mr. Cave, is that you did not have the exclusive use of them?

A. We did not have the exclusive use of them. There was a time or two when the power furnished to drive the tools was out of order. That would cause some delay. That was a minor affair, but, however, it happened.

Q. Was that electric power?

A. Steam power to drive the tools. There was a new engine installed during the progress of our work.

Q. What was the occasion for that?

A. The old power was not equal to the work.

Q. And the new engine was installed after the "Yucatan" went on the dock?

A. Yes, while the "Yucatan" was on the dock.

Q. How much time in all was lost on account of the fact that the exclusive use of the tools and the equipment was not given to the "Yucatan" and also on account of the fact that the equipment, such as the engine, was not sufficient—the power was not sufficient.
116 A. Well, I say we could have gained 3 or 4 days' time if we had exclusive use of the shop. If we could have got our material to the ship as fast as we could use it, we would have

been three or four days ahead of the job, easy enough. We had to govern our work on the ship according to the way we could get our material to the ship.

Q. Did you keep track of the time used in the work on the ship?

A. Yes, sir.

Q. Did you keep an accurate report of the time?

A. Yes, sir.

Q. You were there all the time that the work was being done?

A. Yes. I might have been for a few hours across to Seattle.

Q. You are familiar with the delays that were occasioned by the facts I have mentioned?

A. Yes.

Q. Can you fix it any nearer than three days or four days? You say 3 or 4 days anyhow were lost; what would you say was the time which you lost, 3 days or 4 days?

A. Well, we would have gained 4 days' time on an 8-hour working day.

Q. If you had had the exclusive use, and but for the lack of power and those delays, you think you would have gained four days?

A. I believe we could have.

Q. What hour days would those 4 days be?

A. An 8-hour day.

Q. So it would be 4 8-hour days?

A. Yes, 4 8-hour days.

Q. Then, Mr. Cave, the delay that was caused on that account would have amounted to 32 hours; would that be correct?

A. Well, that is 4 times 8, yes.

Q. The bills for the dockage which are in dispute were presented to you, were they not?

A. Yes, sir.

Q. And you refused to pay them, according to the testimony of Mr. Hubbard?

A. Yes, that is, the overtime.

Q. What was your reason for that?

A. Well, my reason was that I was not satisfied with the way that the dry dock charges were made out. Being familiar with
117 dry-dock work, I was always used to its being divided into two days, the lay day and night dockage.

Q. To what extent are those two bills of June 26th and July 3, respectively, in error as to the computation of dockage for the overtime?

A. Applied to dockage only and not to labor?

Q. On the bill of June 26th, there is a certain amount charged for dockage overtime: Do you find that?

A. Yes.

Q. There appears an item there for 7⅞ lay days that you are charged for.

A. That is the expiration of the first week's work, and I didn't know——

Q. (Int'g.) What is the trouble with that bill?

A. That is where I discovered that we were being charged 3 days for two, and that is what I took exception to.

Q. And you refused to pay the 3 days?
A. I refused to O. K. the bill to my company for three days where I thought it should be charged two.

Cross-examination.

Mr. Whipple:

Q. To whom did you speak about the matter of charging three days for two?
A. Mr. Hubbard.
Q. You spoke to Mr. Hubbard about it?
A. Yes, sir.
Q. What did you say to him?
A. I asked him how it was that we were charged this extra dockage.
Q. What did you say to him?
A. I don't know that I can tell you the exact words. I refused to O. K. the bill on that ground, that we were being charged, as I considered, excess overtime for the dockage applied to the ship, and we held up on it.
Q. Were you basing your interpretation at that time upon the contract or upon a custom?
A. Well, as the matter had been talked over when we had the conversation in the office when the contract was made up. Mr. Hubbard said he was subject to and controlled by the Pacific Coast rules as for dry docks, and the Pacific Coast rules count two days, as they do, for 24 hours.
118 Q. Is that the custom in the northwest?
A. That is the custom on the Pacific Coast. That is the way Mr. Hubbard applied it, Pacific Coast rules. It is the same in Seattle as it is in San Francisco.
Q. Now, about the tools, how do you figure your four days?
A. Well, I figure it as an expert on that kind of work, the amount of work we had done, we had 10 or 12 days' work on that dock; that was the amount of work surveyed; anybody familiar with that class of work could testify that it could be gotten out in that length of time.
Q. Did you keep any memorandum of it?
A. I had a memorandum, yes.
Q. Have you got it?
A. I have not got it here, no.
Q. Where is it?
A. It is lost.
Q. What particular tools were you interfered with in getting because of their being used by the "Archer"?
A. Punchers and shears.
Q. That is all, is it?
A. There might have been some drills. The principal work was getting the plates out. It was all punch work—that is, in the ship; we did the drilling on board with the air tools.
Q. How often was that interfered with?
A. A number of times, almost every day.

Q. As a matter of fact, did not Mr. Hubbard give instructions that they should do their punching at different times from you?

A. Yes. We did all kinds of things; we worked our men in the shop at night, but we could not get ahead, we could not get away with it. We stopped overtime work simply because we could not get the plates through the shop.

Q. Did you interpret the contract in any way to mean that you had the exclusive use of the tools?

A. Yes, I did.

Q. Does the contract say anything about exclusive use?

A. I don't know that it does. I am not going to say
119 positively whether it does of not.

Q. When was this new engine installed that you spoke about?

A. I really don't know; I could not say the exact time. It was during the progress of the work.

Q. How long was the delay?

A. I don't know that there was any delay in installing the new engine, but it was installed while we were in the progress of the work; the delay happened from the old engine.

Q. I say, how long was the delay?

A. Maybe an hour or two at different times.

Q. Your statement of 4 days is just a conclusion of yours?

A. Well, that is figured up by the man I had, the foreman, and different data; we figured when we were on the job.

Q. But you have not got the data?

A. I have not the absolute data, no; unfortunately, I lost my memorandum book.

Q. When did you first take the matter up with the inspectors about having the vessel inspected?

A. On the 21st of February.

Q. I mean after the vessel was in Hall Brothers' yard?

A. I was in touch with the local inspectors at all times from the time we landed in Seattle on the second of May up to the day they arrived on the vessel from Seattle after we docked her on the 18th. The orders to me were to go ahead. As I found things, I laid out the work to them I was doing, both on the boilers and on the hull. They said, "We don't want to come over until you are all opened up, you go right ahead, and after you are on the dock notify us." I notified them when we were going on the dock and when the vessel was on the dock, and they sent assistant inspectors over and went through her.

Q. You had a week's trouble with the boilers, did you not?

A. That had nothing to do with the dry-dock, absolutely nothing.

Q. As a matter of fact, you could have determined all that
120 before it went on the drydock, could you not?

A. We did. There was no trouble about the boilers—the boilers themselves.

Q. There was trouble about whether you should put cement under the boilers themselves, was there not?

A. Yes, but that had nothing to do with the drydock.

Q. You could have ascertained that at the time the vessel first came to the yard in May, could you not?

A. That part of it we could, yes, sir.

Q. You don't have to put her on the drydock to find out whether the floor underneath the boilers is all right, do you?

A. Absolutely not.

Q. When did that come up with the inspectors?

A. A few days after we docked.

Q. It came up about the 20th, didn't it?

A. About the 20th.

Q. And it culminated *with* Supervising Inspector Birmingham went up on the 29th?

A. Yes, sir.

Q. At that time that question was put at rest for the first time?

A. I have not got the exact dates on that right in my memory.

Q. Between the 21st of June and the 29th of June, when Supervising Inspector Birmingham came there, did you not employ Mr. Walter and two other marine surveyors up there to try and influence the local inspectors as to what should be done?

A. Yes.

Q. And didn't that occupy that whole week?

A. That had nothing to do with the progress of the work on the dock.

Q. I am not speaking about the dock. That was after the vessel was on the dock. I say that was taken up between the 21st of June and the 29th of June, wasn't it?

A. Yes, sir.

Q. And it was not necessary for the vessel to be on the dock to take that up, was it?

A. No. We are not making that stand.

Q. So you could have taken that up about the 27th of May?

121 A. Yes. That could have been taken up on the 2nd of May, so far as that is concerned, as soon as the vessel arrived in Seattle. That does not apply to the point in question here at all.

Q. Well, I think it does.

A. I would like to say a little further on that question, the work that the locals recommend that we do, we got consideration from the supervising inspector on that, and did not do it. That is why I say it did not apply to our delay on the dock. The work that was done under those boilers was compromised and was done in two days' time, done by my own men, the men that I had employed on my own payroll; Hall Brothers' Shipyard had absolutely nothing to do with that, other than to furnish the material to do the work with.

Q. At the same time, you could not have done any of that work until you had the matter passed on by the local inspectors?

A. No, I could not have had it done.

Q. You could not have got a certificate to go on the voyage?

A. No.

Q. You had to get their permission to do it in a certain way?

A. Yes.

been three or four days ahead of the job, easy enough. We had to govern our work on the ship according to the way we could get our material to the ship.

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Q. And it was not necessary for the vessel to be on the dock to take that up, was it?

A. No. We are not making that stand.

Q. So you could have taken that up about the 27th of May?

121 A. Yes. That could have been taken up on the 2nd of May, so far as that is concerned, as soon as the vessel arrived in Seattle. That does not apply to the point in question here at all.

Q. Well, I think it does.

A. I would like to say a little further on that question, the work that the locals recommend that we do, we got consideration from the supervising inspector on that, and did not do it. That is why I say it did not apply to our delay on the dock. The work that was done under those boilers was compromised and was done in two days' time, done by my own men, the men that I had employed on my own payroll; Hall Brothers' Shipyard had absolutely nothing to do with that, other than to furnish the material to do the work with.

Q. At the same time, you could not have done any of that work until you had the matter passed on by the local inspectors?

A. No, I could not have had it done.

Q. You could not have got a certificate to go on the voyage?

A. No.

Q. You had to get their permission to do it in a certain way?

A. Yes.

Q. And you took it up on the 21st of June?

A. Yes, and I would have taken it up sooner if I had the vessel on the dock.

Q. But did you have to have the vessel on the dock to find out about the boiler?

A. No, I did not.

Redirect examination.

Mr. Bell:

Q. Did the negotiations with the local inspectors or the supervising inspector in any way have anything to do with not putting the vessel on the dock?

A. With not putting her on the dock?

Q. Yes; in other words, did the negotiations with the inspectors delay putting her on the dock on the 4th or the 5th?

A. Oh, no. If the local inspectors had come aboard the ship on the 4th of June, we will say, that would not have interfered with our docking, if this is what I understand from your question.

122 Q. In other words, they did not hold her up from going on the dock in any way?

A. Absolutely no. They did not hold up her plate work or her hull work. It was up to us to get her on the dock as soon as we could, and they would be there as soon as she was on the dock; that was the order. They did not want to come over until she was on the dock. I was in touch with the locals all the time as to the work we were doing. They said, "When you get the vessel on the dock, we will come over and examine her."

Q. Do you know when the vessel was turned over to the Western Alaska Company?

A. It was on the 9th or 10th of August.

Q. Was she turned over to them as soon as she came off the dock?

A. No, not as soon as she came off the dock?

A. *No, not as soon as she came off the dock.*

Q. What was done with her as soon as she came off the dock?

A. We were off the dock the first time just to get at rest, waiting for our tail shaft.

Q. And after that time did you go on the dock again?

A. We went on the dock a second time and installed the new tail shaft.

Q. How long were you off the dock, if you remember?

A. The first time we came off the dock was on the 5th of July; we laid on the dock on the 4th of July, I know, and I think we worked that night late and finished up—the next day was the 4th. We came off on the 5th. Just the exact date we went back on the dock, I am not able to tell you right off-hand.

Q. When she came off the dock the second time, was she delivered to the Western Alaska Company at once?

A. In a few days, yes; just the number of days I have not in mind right now.

Q. What was being done with her in the interim?

A. After she came off the dock, we were having the boiler inspection. Let me see—that was before; we had our boiler inspection while she was lying off the dock; we could not have it while she was on the dock. Just the number of days from the time she came off the dock the second time until we steamed and sailed away, I have not in mind.

123 Q. Was she delivered to the Western Alaskan Company as soon as possible after she came off the dock the second time?

A. Yes, sir.

Recross-examination.

Mr. Whipple:

Q. When was the vessel finished, so far as the yard was concerned? It was about the 1st of August, wasn't it? That is to say, you could have taken her away about the first of August?

A. Our cards will show the time when we could have taken her away. I have not in mind the exact date.

Q. Would you look and see, please?

A. It seems to me it was about the 4th or 5th. The records of the bills would show absolutely.

Q. The last invoice was August 7th, which would be for the week previously; that would be for work done between the 1st and the 7th wouldn't it?

A. Yes, sir.

Q. Can you tell when she was finished, so far as the yard was concerned; that is to say, wasn't there some length of time between the time she was finished and the time she was delivered?

A. You mean the time the yard was through with her and when she was delivered?

Q. It was agreed to deliver her when?

A. It was agreed with the charterers that they were to have the vessel on the 10th of August. That was the time she was to be delivered so she could start on her voyage, to get away in proper time, and of course we having that number of days, we did not leave the yard until about the 8th to go over and get the vessel coaled, so that we could turn her over to the charterers at Seattle on the 10th.

Q. She was practically finished seven days before that?

A. She could have been taken away about the 6th or 7th, or sometime along there.

The Court: When was that arrangement made?

124 A. That was made after we found we could not deliver the vessel on the 20th; being in touch with the charterers, they had me advise them when we could give them the vessel, and they fixed the next date when they would want her, when they would be best suited to take her, and that was the date, the 9th or the 10th of August; just when that was agreed on by Mr. Schenback, the manager of the Western Alaska Company, I am not able to say.

Mr. Whipple:

Q. Mr. Birmingham got there on the 29th of June, didn't he?

A. I have not the record to show just when he got there but it was sometime during the week, there.

Q. You had quite an altercation with the inspectors, and you hired some outside men to interview them, didn't you?

A. We had the argument that we have in our regular line of work, in that class of work. I don't know that we had such an awful time with them.

Q. Well, Supervising Inspector Birmingham condemned the tail shaft, didn't he?

A. Yes.

Q. And it was ordered immediately, was it?

A. Yes, it was ordered immediately.

Q. When did it reach the yard?

A. I have not the record to tell you just when that did arrive. It was to be delivered in ten days, that was the Union Iron Works' contract.

Q. Delivered where?

A. In Seattle.

Q. But it was not, was it?

A. Not exactly in ten days. It seems to me it ran over to twelve days.

Q. As a matter of fact, it was not delivered until the 20th or 22nd of July, was it?

A. That I cannot answer.

Q. You cannot find it from your records?

A. I have not anything in my record now to show when that tail shaft arrived; at least, I have not got it here. That not being in the question of my objection, I did not try to get that. I lost my memorandum book that I had all this data in.

125 Mr. Bell:

Q. Do you know when this arrangement was made with reference to August 10th with the charterers, was that before or after June 20th?

A. Well, I imagine it would be after June 20th, or thereabouts, when it was discovered that we were not going to get on the dock on the 5th when we expected to; being in touch with the charterers there, the question then arose as to when can we get the vessel.

The Court:

Q. When did you discover that the tail shaft would have to be repaired or replaced?

A. The placing of the vessel on the dock on the 17th; in 2 or 3 days afterwards we commenced to take the wheels off and take off the propeller and we found the tail shaft showed a deterioration. The locals looked at it and questioned whether they should allow it to go on; then Captain Birmingham came up on the 29th, and he

decided that we had better renew the tail shaft. That was final. As he was coming up, they let it stand for his order.

Q. You said something in the early part of your testimony, in speaking of Mr. Hubbard, that you stated to him in some detail what would have to be done as the vessel had already or recently been on the dry dock; what did you mean by that?

A. We placed the vessel on the dry dock in Seattle for a survey. We brought her from Victoria. Not being familiar with what the conditions were underneath, and not being satisfied from the reports that we got from a survey that she had had in the Esquimalt dock, we decided to dock her ourselves, and we docked her for that exclusive purpose, to satisfy ourselves what work there was to do.

Q. And did you discover the condition of the tail shaft?

A. We could not discover the condition of the tail shaft until we took the propeller off. We had to take the propeller off to see what the condition was underneath. That would be impossible to determine in that time. We were just on the dock one day; we
126 were just on and off. We went on to discover the damage to her bottom. At that time the inspector said he would want to see the tail shaft. It was due for an overhauling.

JOHN L. HUBBARD, Recalled for Respondent.

Mr. Bell:

Q. Mr. Hubbard, did not the North Pacific Steamship Company assign to Hall Brothers Marine Railway & Shipbuilding Company some claims which the North Pacific Company had against the Western Alaska Steamship Company?

A. Some claims?

Q. Yes.

A. Of what nature?

Mr. Bell: I will show this to you, Mr. Whipple (handing).

Mr. Whipple:

Q. This is an assignment of money under the charter, is it not?

A. Yes, they made an assignment of the charter.

Mr. Bell:

Q. Of any money to become due under the charter, or due under the charter?

A. Yes, sir.

Q. Did you collect any money from the Western Alaska Steamship Company, Mr. Hubbard?

A. All payments received for the repairs on the "Yucatan" were from the Western Steamship Company.

Q. And was that under this assignment?

A. No, it was on drafts drawn on Mr. Doe at San Francisco.

Q. Did you collect any money from the Western Alaska Steamship Company under this assignment?

A. No, sir.

Q. You have not been paid any of the amounts that you claim in this suit by the Western Alaska Steamship Company?
A. No, sir.

Cross-examination.

Mr. Whipple:

Q. Mr. Hubbard, did you attend to the assignment?
A. No. That was handled by Mr. Billings, here in San Francisco.
Q. All you know about it is that you got drafts up there and collected them?
A. Yes, sir.

127 Mr. Bell: That is our case.

Mr. Whipple: If your Honor please, I took some depositions in Seattle. It was at a time when I thought we would have to meet these damages claimed by the Western Alaska Steamship Company, concerning which we did not know anything. I took these depositions. I am going to offer these depositions for what they are worth as the case now stands. I want to call attention to one matter, and that is with regard to the tail shaft. There is a letter here from Supervising Inspector Birmingham which clears up this matter of dates. It is a letter written by Supervising Inspector Birmingham on July 3, 1911. Mr. Birmingham is now dead. It is addressed to the United States local inspectors at Seattle, Washington. It comes from their files. I will read this part of it:

"Since my return here I have conferred with Mr. C. P. Doe, the owner of the "Yucatan" and have said to him that a new tail shaft should be placed in that vessel, and two new floors and frames." Then he goes on and states what he thinks should be done. He ends his letter by saying:

"Doe anticipates having a new steel shaft in Seattle in about three weeks and this will require another week to get it in place, so all of July will be taken up before the ship is ready for sea. Have suggested giving the new shaft a larger diameter and increasing the thickness of the sleeve; I did not approve that, as the sleeve is no thicker than it should be," and so forth.

I want to offer this in evidence. It shows in full the dispute between the inspectors and Mr. Doe's firm with regard to the condition of the vessel, both with regard to the tail shaft and the boilers.

Mr. Bell: I object to that, your Honor, on the ground that it is entirely immaterial here, because even if the ship was held up for a while, waiting for the tail shaft while she was on the dock,
128 still, the other time between the 4th and the 20th has to be taken into account, or between the 4th and the 17th; if she had gone on that much sooner she would have gone off that much sooner.

The Court: She might have got off that much sooner, but she would not have been delivered any sooner, unless she had a tail shaft.

Mr. Bell: In that situation, your Honor, if she had gone on on the 4th, there would have been half of the time of the tail shaft saved, even according to that letter.

The Court: That does not appear. The objection will be overruled and the testimony admitted.

JOHN L. HUBBARD, Recalled in Rebuttal for Libelant.

Mr. Whipple:

Q. Mr. Hubbard, can you tell from your memorandum there when the tail shaft arrived at Seattle, and when it was put in?

A. Yes, sir. The first work done on the tail shaft by us in placing it in the shaft alley was on the 23rd day of July.

Q. How long did it take to put it in—a week?

A. Commenced fitting the propeller on the 31st; I judge the tail shaft was in by that time.

Q. When could this vessel have been delivered to the North Pacific Steamship Company, as far as any work which the yard was to do on it was concerned; in other words, when were you practically through with that vessel?

A. We did work up to August 3rd.

Q. That was the last day?

A. August 3rd was the last day.

Q. How many men had been working on that vessel during the month prior to that?

A. I could not say.

Q. About how many?

A. Not a great many.

Q. Was there any overtime?

A. There was some overtime work done on the shaft to get the vessel off the dock.

129 Q. I mean, during the month of July was there much overwork done, or any?

A. No. The largest force was employed by Mr. Cave himself; they were not our men at all.

Q. What I mean to say is, they were working just a few men to keep it going until the shaft arrived?

A. Yes, sir.

Q. You stated this morning that you had 35 years' experience in this kind of work. How long have you been in the northwest?

A. I have been there about 25 years.

Q. Will you state now what your idea of this dockage charge is with reference to a two-day period, one period of 8 hours and another period of 16 hours constituting one day, and whether that is a custom in the northwest?

A. 8 hours' work on the dock constitutes a day; it does not matter whether it begins at five o'clock in the afternoon or at eight o'clock in the morning. It does not make any difference when it begins. We may not dock a vessel until five o'clock in the evening, and we may commence work immediately; if we work 8 hours

there the day is completed; if we work over 8 hours, it applies on a new day.

Q. And how is it reckoned, 8 hours or 16 hours?

A. As I said in my evidence here before, we don't draw the lines very closely unless it is particularly stipulated. If it does not amount to a quarter of a day overtime, we don't mention it; if it does, we charge a quarter of a day. If it runs beyond a quarter of a day and nearer half a day, we charge half a day for it.

Q. There is a charge at the end of this bill, I mean, there is a notation about Sunday; will you explain that?

A. Well, we did that because there was only a few men there, and we wanted to be fair, and we did not think it was right to charge them for a lay day there and we gave them the benefit of it.

Q. Did Mr. Cave take up with you the question of the three days for two, that is, did he explain to you that 16 hours consti-
130 tuted a second day of the 24 hours?

A. I never heard that construction put on the matter before until right here.

Q. Did you talk it over with Mr. Cave?

A. No, sir; I never heard that phase of it mentioned. He objected to overtime dockage, but did not specifically mention that he considered he had a right to the use of the dock 16 hours after the 8 had been completed. That was not mentioned.

Q. You did have a talk with him about it, did you? You did have a talk with him?

A. Yes, there was some talk.

Q. What was your idea of his objection?

A. It seemed to me he was more put out because he had not got the vessel on the dock as early as he would like to have got her there, and was not going to be able to complete a charter he had to Alaska; it looked to me on general grounds he was just going to protest that part of it.

Q. You mean he thought it was inequitable and unjust?

A. He did not say anything about three days in two; that matter never came up.

The Court: What is the date of the execution of the charter?

Mr. Bell: April 26, 1911.

Mr. Whipple:

Q. Now, Mr. Hubbard, in regard to the equipment, what conversation did you ever have with Mr. Cave or with Mr. Doe about the equipment—I mean where they complained about your equipment?

A. After the vessel was docked, I heard some little complaint and went to Mr. Cave, or rather, he came to me about it, and I made every effort to try and satisfy him and do what I felt was right in the matter. There was mention made here of an engine. I bought a new engine and put it in the shop because the contention was that there was not power enough to drive the machines all the time without their running slower and not getting full efficiency out of them. I threw out that engine and put a new one in simply to shut off that

complaint. The complaint was made that we were using the punchers for work on the "Archer"; I think their men were a little
131 bit arbitrary in that regard; they could have worked back and forth, and could have "give and take" a little if they wanted to. I think they were a little arbitrary in that regard. I decided to forego any overtime on the "Archer" and work nights there. I instructed our men to do their punching and shearing on the "Archer's" plates at night time, so that we would not interfere in any way with the "Yucatan." That was followed. We used every effort there to try and get the vessel out for them as soon as we could.

Q. In your opinion, Mr. Hubbard, based on your experience, how much time was lost on account of equipment, if any?

A. I don't think there was any. There are means of getting along without punching. If they could not punch a plate they could put it up and drill it with the air drills. There are various ways of getting along with those jobs in a pinch. Those methods were not exercised.

Q. Were there any other complaints made to you outside of the two you have spoken of?

A. I never heard of any.

The Court:

Q. How much time, in your judgment, was actually lost?

A. I don't believe that they lost an hour.

Mr. Whipple:

Q. As regards to the date upon which the vessel was going upon the dock, you said in your testimony this morning you said you thought it would be between the 4th and the 10th; why did you express it in that way?

A. I think Mr. Doe asked me when I expected to have the work completed on the "Archer" so that we could take his ship.

Q. And you simply gave him your opinion?

A. I gave him that as my opinion, yes.

Q. Did you supply the "Yucatan" and the North Pacific Steamship Company with all of the equipment which they demanded of you?

A. Yes, sir.

132 Q. And all the labor?

A. Yes, sir.

Q. And the material?

A. Yes, sir.

Q. Can you recall any circumstances other than you have spoken of in regard to the equipment where any fault was found?

A. No. I don't remember of only two occasions of Mr. Cave speaking of the equipment; once in connection with the engine in the machine shop not being powerful enough, and as I say, I went and got a new engine put in. I think we did that installation at night time, so as to avoid any delay and shut-down in the shop; the other was with reference to someone being in the way of a punch when they wanted to punch their plates.

Q. Is it your opinion, Mr. Hubbard, that you had an equipment there that was entirely adequate for the repair of this vessel?

A. It is. There was only a small quantity of plates to be punched; I think 14 plates went on the ship's bottom.

Q. Did you have other vessels on that dock on which similar work was done?

A. Yes, sir.

Q. Did you ever have any trouble with them?

A. No, sir.

Cross-examination.

Mr. Bell:

Q. You said they might have drilled the plates, instead of punching them; that would have taken considerably longer, would it not?

A. Yes, it probably would, but it would not have meant an absolute stoppage of the work; it could have proceeded by that method.

Q. If the vessel had gone on the dock on June 4th, the tail shaft could have been in 13 days sooner than it was, couldn't it?

A. I think they were rather reluctant to expose the tail shaft; they tried to avoid that. The vessel was docked on the 17th, and I think it was about the 28th when the tail shaft was sighted. I think the delay was in trying to get the local inspectors to permit the vessel to make a voyage or two without inspection of the tail shaft.

133 Q. But in the meantime, while they were drawing the shaft and examining it, they were working on other parts of the vessel, were they not?

A. Oh, yes, putting the new plates on the bottom.

Q. Is it not a fact that if the vessel had gone on the dock on June 4th, the tail shaft could have been put in 13 days sooner than it really was?

A. No, I don't think so, unless they had immediately taken off the propeller and withdrawn the shaft to examine it. That work was delayed until the 28th, from the 17th to the 28th.

Q. If they put her on the dock on the 4th, they would have gotten to it just that much sooner, would they not?

A. Oh, yes, that is the fact, conceding they would have lost the same interval of time in beginning the work, it would have been just that much sooner.

LOUIS A. DARE recalled for the Libelant in Rebuttal.

Mr. Whipple:

Q. You figured out the time with Mr. Cave, as you said before, every day following the work, did you?

A. Yes, sir.

Q. Did Mr. Cave ever make any complaint to you about the equipment?

A. Not about the equipment, no, sir.

Q. What complaints did he ever make to you?

A. We had little differences of opinion now and then as to time,

but we always adjusted those on the spot; I invariably left with his O. K. on the time card.

Q. He never said anything to you about the equipment?

A. No, sir.

Cross-examination.

Mr. Bell:

Q. It was not your business to have anything to do with the equipment, was it?

A. Merely to secure the correct number of hours' use of the equipment on each day.

134 Mr. Bell: I have no further testimony, your Honor; can this be submitted on briefs, if agreeable to the court?

The Court: All right.

Mr. Bell: 10, 10 and 5?

The Court: Yes, 10, 10 and 5.

(Endorsed:) Filed Sep. 8, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

135 At a Stated Term of the District Court of the United States for the Northern District of California, Held at the Courtroom, in the United States Post-office and Courts Building, in the City and County of San Francisco, State of California, on the 19th Day of November, 1915.

Present: Honorable M. T. Dooling, District Judge.

No. 15256.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant and Cross-respondent,

v.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent and Cross-libelant.

Decree.

The above case having been heard on the pleadings and proofs, and having been argued and submitted by the advocates for the respective parties, and due deliberation having been had:

It is now ordered, adjudged and decreed by the Court that North Pacific Steamship Company, a corporation, respondent herein, pay to Hall Brothers Marine Railway and Shipbuilding Company, a corporation, libelant, the sum of twenty-five hundred and thirty-three and 45/100 (2533.45) dollars, together with interest thereon, at the rate of six (6) per cent. per annum from the 3d day of July, 1911, and costs to be taxed.

It is further ordered, adjudged and decreed that the cross-libel filed in the above entitled cause by North Pacific Steamship Company be, and the same is hereby dismissed.

Dated: November 19, 1915.

M. T. DOOLING, *Judge.*

(Endorsed:) Filed Nov. 19, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

136 In the District Court of the United States in and for the Northern District of California, First Division.

No. 15256.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent.

Notice of Hearing, Petition to Arrest and Vacate Decree and to Dismiss Cause for Want of Jurisdiction.

To the above named libelant, and to Chickering & Gregory, its proctors:

To you, and each of you, notice is hereby given that on Saturday, the 18th day of December, 1915, at the hour of 10 o'clock in the forenoon, or as soon thereafter as counsel may be heard, in the court room of the above entitled court, in the Post Office Building, San Francisco, the North Pacific Steamship Company, respondent in said cause, through and by its proctors, C. H. Sooy, Andros & Hengstler, and Golden W. Bell, will petition said court to arrest and vacate the decree signed, filed and entered in said cause upon the 19th day of November, 1915, and to dismiss said cause.

Said motion will be made upon the following grounds, to-wit:

That the subject matter of said cause was not and is not within the admiralty and maritime jurisdiction of the United States or of this honorable court, and that this honorable court was without jurisdiction to hear or determine said cause, or to make said decree.

137 Said motion will be made upon this notice and upon the petition and affidavit annexed hereto, and upon the files, records and proceedings herein.

Dated: December 7th, 1915.

MARCEL E. CERF AND
C. H. SOOY,
Proctors for Respondent.

138 In the United States District Court for the Northern District of California, First Division.

No. 15256.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant,
vs.
NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent.

Petition to Arrest and Vacate Decree and to Dismiss Cause for Want of Jurisdiction.

To the Honorable M. T. Dooling, Judge of the District Court of the United States for the northern district of California:

The petition of North Pacific Steamship Company, a corporation, the respondent in the above entitled cause, respectfully represents to this court as follows:

I.

That on the 19th day of November, 1915, a decree was signed, filed and entered in said cause by this honorable court.

II.

That the subject matter of said cause and of said decree is comprised of the following facts:

On or about the 19th day of May, 1911, the libelant and respondent entered into an agreement whereby the respondent promised to make certain payments to libelant, and whereby, in consideration of said promises, libelant agreed to furnish to the respondent its marine railway, ship yard, equipment and labor to enable respondent to move its vessel, "Yucatan," from the waters of the Puget
139 Sound and place it on ways in the said ship yard, and to enable respondent there and thereby to repair said vessel. That said libelant claims that it performed its contract and respondent failed to pay it $2533.45, the balance claimed to be due it for the use of said marine railway, ship yard, equipment and labor while said steamship was out of said waters and on said railway and in said ship yard.

Wherefore petitioner respectfully represents that the subject matter of said cause was not and is not within the admiralty and marine jurisdiction of the United States, or of this honorable court, and that this honorable court was without jurisdiction to hear or determine said cause or to make said decree, or to take any action with respect thereof, except to vacate said decree and to dismiss said cause for want of jurisdiction, and petitioner respectfully prays that this honorable court vacate said decree and dismiss said cause, and in the

meantime and pending the hearing of this petition, all further proceedings in this cause and on said decree be stayed.

Dated December 7th, 1915.

NORTH PACIFIC STEAMSHIP COMPANY,
Respondent,

By CHAS. P. DOE, *President.*
C. H. SOOY,
MARCEL E. CERF,
Proctors for Respondent, Petitioner.

140 In the United States District Court for the Northern District of California, First Division.

No. 15256.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant,
vs.
NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent.

Affidavit on Petition to Arrest and Vacate Decree and to Dismiss Cause for Want of Jurisdiction.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Chas. P. Doe, being first duly sworn, deposes and says: That North Pacific Steamship Company, a corporation, respondent in the above entitled cause, is a corporation, and that affiant is an officer, to-wit, the President of said corporation, and makes this affidavit for and on behalf of said corporation.

That on or about the 19th day of November, 1915, a decree was signed, filed and entered in the above entitled cause by the above named court; that the subject matter of said cause and of said decree is comprised of the following facts:

On or about the 19th day of May, 1911, the libelant and respondent entered into an agreement whereby the respondent promised to make certain payments to libelant, and whereby, in consideration of said promises, libelant agreed to furnish to the respondent its marine railway, ship yard, equipment and labor to enable respondent to move its vessel, "Yucatan," from the waters of Puget Sound
141 and place it on ways in the said ship yard, and to enable respondent there and thereby to repair said vessel. That said libelant claims that it performed its contract and respondent failed to pay it $2533.45, the balance claimed to be due it for the use of said marine railway, ship yard, equipment and labor while said steamship was out of said waters and on said railway and in said ship yard.

That this affidavit is made in support of the petition of said respondent to arrest and vacate the said decree and dismiss said cause for want of jurisdiction.

CHAS. P. DOE.

Subscribed and sworn to before me this 7th day of December, 1915.

[SEAL.] FLORA HALL,
Notary Public in and for the City and County of San Francisco, State of California.

Receipt of a copy of the within Notice of hearing, petition and affidavit is hereby admitted this 7th day of December, 1915.

CHICKERING AND GREGORY,
Proctors for Libelant.

(Endorsed:) Filed Dec. 8, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

142 In the District Court of the United States in and for the Northern District of California, First Division. In Admiralty.

No. 15256.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant,

vs.

NORTH PACIFIC STEAMSHIP CO., a Corporation, Respondent.

(Opinion Denying Motion to Vacate Decree and Dismiss Cause for Lack of Jurisdiction.)

Chickering & Gregory and George H. Whipple, Esq., Proctors for Libelant.

Marcel E. Cerf, Esq. and Chas. H. Sooy, Esq., Proctors for Respondent.

The motion to arrest and vacate the decree herein, and to dismiss said cause for lack of jurisdiction is denied.

January 10th 1915.

M. T. DOOLING, *Judge.*

(Endorsed:) Filed Jan. 10, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

143 In the District Court of the United States for the Northern District of California.

No. 15266.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING CO. (a Corporation), Libelant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent.

Substitution of Proctors.

We, the undersigned, heretofore of proctors for the above named respondent, do hereby assent to withdraw from said cause and from acting as proctors therein in any proceedings hereafter to be had in said cause, and to the substitution therein as proctors of C. H. Sooy, H. W. Glensor and Marcel E. Cerf.

ANDROS & HENGSTLER.
L. T. HENGSTLER.
GOLDEN W. BELL.

Respondent, North Pacific Steamship Company, a corporation, hereby expressly assents to the withdrawal of Messrs. Andros & Hengstler, L. T. Hengstler, and G. W. Bell as proctors therein in any proceeding hereafter to be had in said cause; and said respondent hereby substitutes C. H. Sooy, H. W. Glensor and Marcel E. Cerf as its proctors in said cause.

Dated: December 14, 1915.

NORTH PACIFIC STEAMSHIP COMPANY, *Respondent,*
By CHAS. P. DOE, *President.*

We, the undersigned, hereby assent to the withdrawal from the above entitled cause of the above named proctors, and to our substitution therein as proctors.

Dated: December 14, 1915.

MARCEL E. CERF.
H. W. GLENSOR.
C. H. SOOY.

(Endorsed:) Filed Dec. 30, 1915. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

(Here follows picture marked p. 143½)

144 In the District Court of the United States in and for the Northern District of California, First Division.

No. 15256.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent.

Order that Exhibit be Filed.

Upon the hearing of the respondent's petition to arrest and vacate the decree in the above entitled suit, and to dismiss said suit for want of jurisdiction, the accompanying photograph was identified and offered by respondent, and received in evidence, as a picture of the position occupied by the steamship "Yucatan" when she was on the marine railway of libelant, as referred to in said cause; and

It is now ordered that said photograph, as such picture, be filed as an exhibit in said cause.

Done in open court this 24 day of January, 1916.

M. T. DOOLING, *Judge.*

(Endorsed:) Filed Jan. 24, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

145 In the United States District Court for the Northern District of California, First Division.

No. 15356.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant and Appellee,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent and Appellant.

Petition for Leave to Appeal.

To the Honorable M. T. Dooling, Judge of the District Court of the United States for the Northern District of California, First Division:

The petition of North Pacific Steamship Company, a corporation, respondent in the above entitled proceeding, in this court, respectfully represents as follows:

That, heretofore, Hall Brothers Marine Railway and Shipbuilding Company, a corporation, filed its libel in this court against the respondent to recover the sum of $2533.45, the balance claimed to be due it under and by the terms of a certain contract theretofore entered into by it with the said respondent; thereafter, in the present term of this court, to wit, on the 19th day of November, 1915, a final decree was entered in this suit sustaining the libel of said libelant, and ordering the said respondent to pay said libelant the sum of $2533.45, together with interest thereon at the rate of 6% per annum from the 3rd day of July, 1911, and costs.

Your petitioner believes that said decree is erroneous; that this court was always without jurisdiction of said proceeding, and that injustice would be done if the same would be carried into effect.

146 Wherefore your petitioner prays for leave to appeal from said decree to the Supreme Court of the United States.

Dated: January 20, 1916.

NORTH PACIFIC STEAMSHIP COMPANY,

By CHAS. P. DOE, *President.*

MARCEL E. CERF AND
CHARLES H. SOOY,
Proctors for Respondent.

NORTHERN DISTRICT OF THE STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Chas. P. Doe, being first duly sworn, deposes and says: That he is an officer, to wit, the President of the North Pacific Steamship Company, a corporation, respondent in the above entitled suit; that the appeal of said respondent from the final decree of the District Court of the United States in and for the Northern District of California, First Division, in said suit, is not taken for delay, but is taken because respondent believes that injustice would be done by the decree if carried into effect; that affiant makes this affidavit for and on behalf of said respondent because respondent is a corporation and he is an officer thereof, and because the facts set forth herein, and in said petition, are within the knowledge of affiant.

CHAS. P. DOE.

Subscribed and sworn to before me this 20th day of January, 1916.

[SEAL.] FLORA HALL,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed Jan. 20, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

147 In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,356.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant and Appellee,
vs.
NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent and Appellant.

Assignment of Errors.

North Pacific Steamship Company, a corporation, respondent in the above entitled suit, hereby assigns error to the decree of the District Court of the United States for the Northern District of California, First Division, in the said suit, in the particulars hereinafter specified.

The subject matter of said suit comprised the following facts: On or about the 19th day of May, 1911, the libelant and respondent entered into an agreement whereby the respondent promised to make certain payments to libelant, and whereby, in consideration of said promises, libelant agreed to furnish to the respondent its marine railway, ship yard, equipment and labor to enable respondent to move its vessel, "Yucatan," from the waters of the Puget Sound and place it on ways in the said ship yard, and to

enable respondent there and thereby to repair said vessel. That said libelant contended that it performed its contract, and that respondent failed to pay it $2533.45, the balance claimed to be due it for the use of said marine railway, ship yard, equipment and labor while said steamship was out of said waters and on said railway and in said ship yard.

(1) The court erred in hearing and determining said suit; which error results from the fact that the said subject matter of
148 said suit is not within the admiralty and maritime jurisdiction of the United States, but is concerned exclusively with a contract, the subject matter of which is not maritime.

(2) That the court erred in its decision implied in its decree that the said subject matter of said suit is maritime, and is within the admiralty and maritime jurisdiction of the United States.

(3) The court erred in denying respondent's petition to arrest and vacate its decree and to dismiss said cause, which petition was presented on the ground that the said subject matter of said cause is not maritime and was not within the admiralty and maritime jurisdiction of the United States or said court.

(4) The court erred in not dismissing the libel; which error results from the fact that the said subject matter of said cause was not maritime, and consequently was not within the admiralty and maritime jurisdiction of the United States or said court.

Dated: San Francisco, California, January 25, 1916.

MARCEL E. CERF AND
CHARLES H. SOOY,
Proctors for Respondent and Appellant.

Receipt of the foregoing Assignment of Errors by receipt of a copy is hereby admitted this 25th day of January, 1916.

GEO. H. WHIPPLE AND
CHICKERING & GREGORY,
Proctors for Libelant and Appellee.

(Endorsed:) Filed Jan. 25, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

149 In the United States District Court for the Northern District of California, First Division.

No. 15256.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant and Appellee,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent and Appellant.

Order Allowing Appeal to the Supreme Court of the United States, Fixing Bond and Setting Forth the Jurisdictional Question.

North Pacific Steamship Company, a corporation, respondent in the above entitled suit, having prayed an appeal to the Supreme

Court of the United States from the final decree rendered in the above entitled suit by the said District Court of the United States in and for the Northern District of California, First Division, in the present term of said court, to wit, on the 19th day of November, 1915.

Therefore, on motion of the proctors for said respondent,

It is hereby ordered that the said appeal be, and the same is, hereby allowed and,

It is further ordered that to stay the execution of said decree the said respondent, in addition to giving security for costs, give a bond with sufficient surety in the sum of Forty-five hundred dollars, that it will abide by and perform whatever decree may be rendered in the suit.

It is hereby certified that after the trial of said cause, and after the entry of judgment therein, the jurisdiction of said Court to hear and determine said cause was challenged by appellant by a motion to set aside said judgment and dismiss the said cause
150 on the ground that said Court had no jurisdiction to hear and determine the cause of action for a breach of contract entered into between the parties to said suit, which was the subject matter of said suit. The said motion was by the Court denied.

January 24th, 1916.

M. T. DOOLING, *Judge.*

(Endorsed:) Filed Jan. 24, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

151 In the United States District Court for the Northern District of California, First Division.

No. 15356.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant and Appellee,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent and Appellant.

Notice of Appeal.

To Messrs. Chickering & Gregory and George H. Whipple, Esq., Proctors for Libelant:

Please take notice that North Pacific Steamship Company, a corporation, respondent in the above entitled suit, hereby appeals to the Supreme Court of the United States, from the final decree made and entered herein on the 19th day of November, 1915.

You will please take further notice that the bond on the appeal herein has been filed this day in the office of the clerk of the District Court of the United States, in and for the Northern District of California, First Division, and executed and given by Massachusetts Bonding and Insurance Company, a corporation.

Dated at San Francisco, California, this 25th day of January, 1916.

MARCEL E. CERF AND
CHARLES H. SOOY,
Proctors for Appellant.

Receipt of the foregoing Notice of Appeal by receipt of a copy is hereby admitted this 25th day of January, 1916.

GEO. H. WHIPPLE AND
CHICKERING & GREGORY,
Proctors for Libelant and Appellee.

(Endorsed:) Filed Jan. 25, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

152 In the United States District Court for the Northern District of California, First Division.

No. 15256.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant and Appellee,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent and Appellant.

Bond on Appeal Staying Execution.

Know all men by these presents, that we North Pacific Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business at San Francisco, California, and Massachusetts Bonding and Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, are held and firmly bound unto Hall Brothers Marine Railway and Shipbuilding Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business at San Francisco, California, in the sum of Five hundred ($500.00) dollars, and in the further sum of Forty-five hundred ($4500.00) dollars, to be paid to said Hall Brothers Marine Railway and Shipbuilding Company, a corporation, its successors or assigns, for the payment of which well and truly to be made we bind ourselves, and each of us, our, and each of our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 20th day of January, in the year of our Lord, one thousand nine hundred and sixteen.

Whereas, North Pacific Steamship Company, a corporation, the respondent in the above entitled suit, has appealed to the
153 Supreme Court of the United States from a decree of the District Court of the United States in and for the Northern

District of California, First Division, bearing date the 19th day of November, 1915, in a suit in which said Hall Brothers Marine Railway and Shipbuilding Company, a corporation, is libelant, against the said North Pacific Steamship Company, a corporation, respondent, which decree orders the said North Pacific Steamship Company to pay libelant the sum of $2533.45, together with interest thereon at the rate of six per cent per annum from the 3rd day of July, 1911, and costs, and

Whereas said North Pacific Steamship Company desires, during the process of such appeal, to stay the execution of the said decree of the said District Court:

Now, Wherefore, the condition of this obligation is such that if the above named appellant, North Pacific Steamship Company, shall prosecute said appeal with effect, and pay all costs which may be awarded against it as such appellant, if the appeal be not sustained, and shall abide by and perform whatever decree may be rendered by the Supreme Court of the United States in this cause, or on the mandate of said court by the court below, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

[SEAL.] NORTH PACIFIC STEAMSHIP COMPANY,
By CHAS. P. DOE, *President.*

Attest:
G. R. WALKER, *Secretary.*

[SEAL.] MASSACHUSETTS BONDING AND INSURANCE COMPANY,
By JOHN H. ROBERTSON, *Attorney-in-fact.*

Attest:
S. M. PALMER,
Attorney-in-fact.

Sealed and delivered and taken and acknowledged this 20th day of January, 1916, before me.

[SEAL.] H. B. DENSON,
Notary Public in and for the City and County of San Francisco, Northern District of the State of California.

154 The foregoing bond is approved as to form and amount and sufficiency of surety.

Dated: January 25th, 1916.

M. T. DOOLING, *Judge.*

(Endorsed:) Filed Jan. 25, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

155 *Certificate of Clerk U. S. District Court as to Transcript on Appeal.*

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing 154 pages, numbered from 1 to 154, inclusive, to contain a full, true and correct transcript of the records and proceedings, in the case of Hall Brothers Marine Railway & Shipbuilding Co., a corp., vs. North Pacific Steamship Company, a corp., No. 15,256, as the same now remain on file and of record in the office of the Clerk of said District Court; said transcript having been prepared pursuant to and in accordance with "Praecipe" (copy of which is embodied in this transcript), and the instructions of the Attorneys for Respondent and Appellant herein.

I further certify that the cost for preparing and certifying to the foregoing transcript on appeal is the sum of Ninety Four Dollars and Twenty Cents ($94.20) and that the same has been paid to me by the Attorneys for the Appellant herein.

Annexed hereto is the Original Citation on Appeal, issued herein (page 156).

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of May, A. D. 1916.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING, *Clerk*,
By C. W. CALBREATH,
Deputy Clerk.

C. M. T.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 5/10/16. C. W. C.]

156 In the United States District Court for the Northern District of California, First Division.

No. 15,756.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY, a Corporation, Libelant and Appellee,

vs.

NORTH PACIFIC STEAMSHIP COMPANY, a Corporation, Respondent and Appellant.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Hall Brothers Marine Railway and Shipbuilding Company, a corporation, libelant in a cause in the District Court of the United States for the Northern District of the State of California, First Division, entitled "Hall Brothers Marine Railway and Shipbuilding Company, a corporation, libelant, against North Pacific Steamship Company, a corporation, respondent," Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the City of Washington, in the District of Columbia, on the second Monday of October, 1916, pursuant to an appeal to said court duly filed in the clerk's office of the said District Court of the United States, wherein the said North Pacific Steamship Company is appellant, and you are appellee, from a decree of the said District Court of the United
157 States, rendered by said court in said cause on the 19th day of November, 1915, then and there to show cause, if any there be, why the said decree of the said District Court of the United States in and for the Northern District of California, in the above entitled cause, should not be reversed or corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. T. Dooling, Judge of the District Court of the United States, in and for the Northern District of California, First Division, at the City and County of San Francisco, State of California, this 24th day of January, 1916.

M. T. DOOLING,
United States District Judge.

Receipt of the foregoing Citation on Appeal by receipt of a copy is hereby admitted this 25th day of January, 1916.

GEO. H. WHIPPLE AND
CHICKERING & GREGORY,
Proctors for Libelant and Appellee.

[Endorsed:] No. 15256. In the United States District Court for the Northern District of California, First Division. Hall Brothers Marine Railway and Shipbuilding Company, a corporation, Libelant and Appellee, vs. North Pacific Steamship Company, a corporation, Respondent & appellant. Citation on Appeal. Marcel E. Cerf, and Chas. H. Sooy, Attorney- for Res. & Appellant, 654-655 Mills Building, San Francisco, California. Filed Jan- 25, 1916. W. B. Maling, Clerk, by C. W. Calbreath, Deputy Clerk.

Endorsed on cover: File No. 25,575. N. California D. C. U. S. Term No. 745. North Pacific Steamship Company, appellant, vs. Hall Brothers Marine Railway and Shipbuilding Company. Filed October 24th, 1916. File No. 25,575.

FILED
APR 3 1918
JAMES D. MAHER,
Clerk.

-2-

Supreme Court of the United States

OCTOBER TERM, 1917

No. [redacted]53

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,

vs.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY,
Appellee.

BRIEF FOR APPELLANT.

FRANK W. AITKEN,
H. W. GLENSOR,
ERNEST CLEWE,
AITKEN, GLENSOR & CLEWE,
Proctors for Appellant.

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Supreme Court of the United States

OCTOBER TERM, 1917

No. 301

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,

vs.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY,
Appellee.

BRIEF FOR APPELLANT.

I.

Statement of Case.

This is a direct appeal from a decree of the District Court of the United States for the Northern District of California sustaining appellee's libel in admiralty. The appeal is based upon the ground that the District Court was without jurisdiction in admiralty to hear or determine the cause by reason of the fact that the subject-matter thereof was not maritime, and consequently that

the court erred (1) in so hearing and determining said cause, (2) in rendering said decree, (3) in denying appellant's petition to arrest and vacate said decree and to dismiss said cause, and (4) in not dismissing it.

The decision of the District Court is squarely opposed to the reasoning of this court in similar cases; and in view of the fact that it extends admiralty law and procedure to a class of contracts which are not maritime in their nature or subject-matter, and which are of large and ever increasing importance, it becomes a matter of great moment that this court review the ruling of the District Court and determine the question itself. It has not been directly decided by this court heretofore.

The facts in the case are briefly as follows: Libelant, Hall Brothers Marine Railway and Shipbuilding Company, a California corporation, and appellant, North Pacific Steamship Company, also a California corporation, made a parol contract or agreement whereby libelant was to turn over to appellant its marine railway, shipyard, equipment, supplies and laborers for a period of time sufficient to enable *appellant* to repair its vessel, the "Yucatan". In consideration therefor appellant agreed to make payments in accordance with a certain schedule, a copy of which is set forth as Exhibit "A" to the amended libel (Tr. pp. 10-11). This schedule is not the contract. It is a memorandum only of the rates to be charged. The contract itself rested in parol (p. 78, f. 66; p. 100, f. 97).

Under this contract or agreement appellant took possession of libelant's marine railway and shipyard, and used its equipment, supplies and laborers and *itself* overhauled and repaired the "Yucatan". Appellant paid all bills presented to it in accordance with said schedule, except two. It objected to certain sums charged in these two for rental of the marine railway for certain overtime, and refused to pay the amounts so charged. Libelant thereupon sued to recover the disputed amount, namely, $2533.45, alleging the contract for the payment of some $29,000 more or less and that said sum of $2533.45 remained unpaid thereon.

The contention between the parties is as to whether the contract is one which brings the case within the admiralty jurisdiction of the District Court—whether it is for the use of a shipyard or for work on a ship.

In the lower court the appellant contended that the contract was one solely for the use by appellant of libelant's marine railway, shipyard, equipment and laborers in such manner as appellant might choose to employ them. Libelant contended that the contract was one for repairs to be made *by it* to the "Yucatan". Upon the construction of the agreement depends the determination of this appeal.

There was no written agreement between the parties except the schedule of prices in evidence as Exhibit A (Tr. p. 10, f. 16). This schedule is obviously only a memorandum of some of the terms

of the agreement or "oral understanding" which had been reached previously by Mr. Hubbard and Mr. Doe (p. 78, f. 66). It does not purport to be a complete contract; for instance, it does not state who is to make the repairs or indicate in any way what the repairs are. It specifies the price to be paid for the use of the marine railway—a per diem charge for each "lay day" on which work is done; it also gives a price for water and for the use of hammers, riveters, lathes, etc. It provides that material will be supplied at a certain percentage above cost, and similarly as to all necessary labor "used in repairing the vessel". It does *not* provide for the doing of any repair *work* by libelant, either in accordance with plans, or orders, or requirements, or otherwise.

That the work is to be done by the ship owner, the appellant, and not by the yard-owner, the libelant, clearly appears from the provision as to overtime dockage, which states that the per diem "lay day" charge "contemplates *allowing work to be carried on*" during the usual eight-hour day, and continues:

> "In case *you desire to work over time* the same lay day rates will apply."

Under this agreement appellant made repairs to its ship and libelant rendered it bills covering dockage, labor, use of equipment, and materials "sold to" the ship and its owners, but never for *work done* or *repairs made*.

The only items unpaid were two charges for the use of the marine railway for certain periods of overtime, charged under the above-quoted provision. These charges, which are clearly for rent for the use of the railway as a part of the yard, are the items for the collection of which (as an unpaid balance of the contract price as a whole) this libel was filed.

The writing (Exhibit A) is not a complete or definite statement of the contract of the parties. It therefore becomes necessary that the court particularly consider and clearly analyze the following testimony, which deals with the nature of the contract and the subject-matter of this action. Whatever doubt there may have been as to the nature of the contract was removed by the testimony of the men who made it.

John L. Hubbard, libelant's manager, described the contract in the following language (Tr. pp. 81, 91, 95, 96):*

> "Q. Did you give any estimate on how long it would take to make those repairs?
>
> A. I did not; in fact I was not doing the repairs. Mr. Cave was *doing the repairs himself*. We only *furnished* the dock and air and equipment and such men as they required of us." (Tr. p. 81, f. 71.)
>
> * * * * * * *
>
> "Q. Mr. Hubbard, you remember this contract which is in evidence here; I want to ask you if that is the ordinary character of contract which your corporation generally entered into?

*Italics in quotations are supplied by us, throughout.

A. Yes, it is. Some features of it are a little out of the ordinary.

Q. Do you generally do the work yourself, or not?

A. That is where this differs from the usual contract.

Q. That is what I mean: In what way does it differ?

A. It was intended to cover a condition where the *owners were to do and to supervise the work themselves, and we were to furnish the use of the dock* and the equipment and the men at a certain stipulated price, and the material."

* * * * * * *

"Q. You said that in the ordinary contract you had for repairing a vessel there, there is a provision that if you do not repair her within a certain time you will have to pay demurrage: Is that true?

A. Yes, that largely prevails.

Q. There was no such agreement in this case, was there?

A. No, sir, *we were not repairing the vessel.*"

* * * * * *

"Q. How did it happen in this case that they did their own supervising?

A. That is what Mr. Doe wanted. *He did not want us to undertake the job.* We were not asked to give an estimate as to what it would cost or anything of that kind; *he wanted to do it himself.*"

And Charles P. Doe, appellant's president and general manager testified as follows, referring to his conversation with Mr. Hubbard (Tr. pp. 100, 101, 102):

"He wanted to know when we wanted to go on and what we were going to do. I gave him a

brief outline of it. He said he could take her on. I said, 'All right'.

We had a general conversation as to what the steamer was going to do and the character of the repairs to be made and the conditions under which *we wanted to make them.*"

"Q. In that conversation was anything said as to the details of the conditions which you mentioned? You said you had a conversation with reference to general conditions under which the vessel was to be placed there: What did you refer to by that?

A. The amount of repairs, and who was to make them, and the system under which we wanted to make them; in other words, *we did not want him as a dock-yard man to make the repairs, we proposed to do those ourselves. We wanted to use his facilities.*" (Tr. pp. 100-101, ff. 97-98.)

* * * * * * *

"Q. In either of those conversations, was anything said with reference to the character of the tools, and the accommodations, and so forth, to be furnished for the repair of the 'Yucatan' while at that dock?

A. Yes. It was understood at all times that *we were to go in and use the yard* practically as if we owned it, other than the fact that he wanted to finish up the 'Archer' before the 'Yucatan' was docked. After that, we were to have the use of all the equipment he had."

And Mr. Cave, appellant's superintending engineer, had the same understanding of the contract (Tr. p. 112):

"Q. With reference to the equipment and the use of the dock, was anything said with reference to what part of the equipment should be used by the 'Yucatan'?

A. Well, as I understood it, all of it, anything they had in the yard. *We paid them for*

the privilege of going to the yard and using their tools absolutely."

The above is the testimony of the men who made the contract, and there is apparently no dispute between them as to its nature. They considered it purely as a contract for the supplying of a marine railway, shipyard and equipment, but calling for the performance by libelant of no service whatsoever on or for a ship. The dispute was between counsel as to whether the contract, as so understood between the parties, was of a maritime nature or not. Appellant contended it was not, and therefore not within the admiralty and maritime jurisdiction of the United States or of the District Court.

The court, however, was of the opposite opinion and rendered its decree in favor of libelant for the amount demanded, and denied appellant's petition to arrest and vacate said decree and to dismiss said libel, which was made upon the ground that the subject-matter of the libel was not within the maritime jurisdiction of the United States or the court.

Hence this appeal.

II.

Errors Assigned and Relied Upon.

(1) The court erred in hearing and determining said suit; which error results from the fact that

the said subject-matter of said suit is not within the admiralty and maritime jurisdiction of the United States, but is concerned exclusively with a contract, the subject-matter of which is not maritime.

(2) The court erred in its decision implied in its decree that the said subject-matter of said suit is maritime, and is within the admiralty and maritime jurisdiction of the United States.

(3) The court erred in denying appellant's petition to arrest and vacate its decree and to dismiss said cause, which petition was presented on the ground that the said subject-matter of said cause is not maritime and was not within the admiralty and maritime jurisdiction of the United States or said court.

(4) The court erred in not dismissing the libel; which error results from the fact that the said subject-matter of said cause was not maritime, and consequently was not within the admiralty and maritime jurisdiction of the United States or said court.

Tr. p. 136.

III.

Brief of Argument.

We shall present our argument in this brief along the following lines:

The contract was not maritime as to its subject-matter. This appears from the written memorandum and more particularly from the testimony as to the actual contract.

As the nature of the subject-matter is the proper test of admiralty jurisdiction, this is not an admiralty case.

Admiralty cannot take jurisdiction here on the ground that some severable part of the contract was maritime, because the libel was filed on the contract as an entirety and because if the items can be segregated it appears that the only item in controversy is distinctly non-maritime—a per diem rental, for a resting-place on land, for a ship which was being repaired by its owners.

The Act of June 23, 1910, does not give the court jurisdiction, as Congress cannot extend the jurisdiction of admiralty and also because the Act itself does not purport to give remedies in personam.

THE SUBJECT-MATTER OF THE CONTRACT WAS NOT MARITIME.

Jurisdiction in admiralty depends on the subject-matter and not on the ultimate object or purpose of the contract.

We urge the court particularly to consider the nature of the contract and the fact that the parties themselves are in agreement in that regard, for

upon the nature of the contract depends the solution of the problem and the determination of this appeal.

The Shop and Yard, as a Whole, Was the Subject-Matter.

The subject-matter of the contract was the ship yard, which appellant hired as a whole—including machine shop and marine railway—for the purpose of making repairs to its ship itself. Appellant did not bargain for making repairs or for the *results* of the use of the equipment, labor and materials supplied by libelant, but for the *use* thereof by itself. This appears both from the writing, Exhibit A, and from the oral testimony.

The court will note that the memorandum was not the usual form of contract whereby a shipbuilding company agrees to repair a ship. It did not call for the performance by libelant of any service on or for a ship, either on water or land. It called merely for the supply of a shipyard, nothing more. That constituted its subject-matter. In other words, appellant agreed to pay a stipulated price for the use of a shipyard and equipment, a subject-matter having nothing to do with ships or shipping. As was well said by Mr. Cave, appellant contracted for "the privilege of going to their yard and using their tools"; and the *privilege of using* the tools of a ship yard—lathes, drill-presses, punches, etc., and also the ship railway—is not maritime.

The court will recall the testimony of Mr. Hubbard, Mr. Doe and Mr. Cave heretofore set out. Each of them testified that it was not the usual form of contract; that libelant merely furnished its yard

and equipment at a stipulated price, that it had nothing whatsoever to do with making repairs, but on the other hand, that appellant took over the yard and equipment practically as if it owned it and made the repairs itself.

As libelant's manager Mr. Hubbard testified (Tr. p. 91, f. 85) libelant's usual or general contract is quite different in that specifications are usually made up "stipulating what the character of the repairs are on the vessel". There is nothing of that sort in Exhibit A—not even a *general* statement as to what repairs are to be made.

But if Exhibit A could be considered the contract itself, it would still be so incomplete as to require interpretation; and the parties have supplemented it by their testimony as to what their interpretation of it was, and what they did under it.

Counsel for libelant claims that the subject-matter of the contract was repairs to be made by it to appellant's vessel, and that Exhibit A supports such claim. The facts and the law are otherwise. Exhibit A is not the contract itself; it is evidence of certain terms of the contract. It is in fact a schedule of charges for use of the marine railway, equipment, laborers, etc. It is absolutely silent as to who was to make repairs or what repairs were to be made; it contains none of the usual provisions of a complete contract even for the use of a yard. The real contract, as referred to in Mr. Hubbard's and Mr. Doe's testimony, rested in parol. The memorandum is incomplete, and the parties have

supplemented it by their testimony. They have testified what the contract was, and what they did under it. It is not within the province of counsel to contend that they misconstrued it, particularly with respect to matters upon which the writing is silent. As the California Supreme Court has said:

> "Parties to a contract have a right to place such an interpretation upon its terms as they see fit, even when such an interpretation is apparently contrary to the ordinary meaning of its provisions. And in all cases where the terms of their contract, or the language they employ, raises a question of doubtful construction, and it appears that the parties themselves have practically interpreted their contract, the courts will follow that practical construction."
>
> *Mitau v. Roddan*, 149 Cal., at 14.

The conduct of the parties also shows what the contract was.

As was well said upon one occasion by Lord Chancellor Sugden, show me what the parties have done under a contract and I will tell you what that contract means.

> *Attorney General v. Drummond*, 1 Dr. & W. (Irish Ch.) 353.

See also *Brooklyn Life Insurance Co. v. Dutcher*, 95 U. S. 269, to the effect that

> "there is no surer way to find out what parties meant, than to see what they have done".

What was done is plain and convincing: appellant used the plant and made the repairs; libelant

rendered bill for dockage, etc., but never for making repairs.

Neither the writing, the testimony as to the making of the contract, nor the acts of the parties show a maritime subject-matter.

The Subject-Matter, the Yard, Distinguished from the Object, Repairs.

The subject-matter, we have pointed out, was the plant and equipment which appellant contracted to use, and used, in repairing its ship. The *repairs* were not the subject-matter of any contract; making its repairs itself, it made no contract for them.

The *object* of the contract on the other hand was the repair of the ship; and with this the libelant had no concern. The appellant's superintendent was in sole charge of repairs. It was no concern of libelant what repairs were made, or how they were made or who made them. Its only concern was that appellant pay for the use of the shipyard. That was the subject-matter of the contract as distinguished from the object which appellant had in mind in entering into it.

Assume that instead of having entered into this contract for an uncertain period, the appellant had leased the shipyard for a year or two years, or had purchased it, or had purchased a piece of ground upon which to build a shipyard of its own, in each case the ultimate object being the repair of ships. In none of the above instances would the subject-matter have anything to do with a ship.

nor could it be made the basis of a libel in an admiralty court for the recovery of the agreed rental or purchase price of the yard or of the bare land. And yet that is the identical situation in the present case. The claim of libelant is solely for use and occupation of its yard.

The object of the contract is immaterial; it is the subject which is controlling.

As was said by Justice Woodbury in *Leland v. Ship Medora,* 15 Fed. Cases No. 8237, at page 303:

> "Admiralty jurisdiction in contracts relates to subject-matter * * * this means subject-matter of the contract, that is, *the thing to be done* being maritime, and *not the object of a contract,* as a ship."

See also:

The Paola R, 32 Fed. 174.

The *thing to be done* in this case was for the libelant to turn over to appellant its shipyard. The *object of the contract* was to enable appellant to make repairs to its vessel.

THE SUBJECT-MATTER OF A CONTRACT, NOT THE OBJECT, IS THE TEST OF ADMIRALTY JURISDICTION.

In admiralty, subject-matter has come to be the test of jurisdiction over contracts. In the beginning location was held to be the criterion, and it was strictly applied. Then followed a reaction against the strict doctrine of location and the swing of

the pendulum in the opposite direction has brought in the rule of subject-matter as the test of jurisdiction. As expressed by Justice Story, admiralty jurisdiction over contracts

> "extends over all contracts, wheresoever they may be made or executed, or whatsoever may be the form of the stipulations, which relate to *navigation, business or commerce of the sea*".
>
> *De Lovio v. Boit*, 7 Fed. Cases No. 3776.

But this court, in finally adopting the subject-matter of the contract as the test of jurisdiction, clearly indicated that no contract could satisfy the test unless it covered "maritime service or maritime transactions".

> *Insurance Co. v. Dunham*, 11 Wall. 1, 26.

Again we find the rule fairly stated by this court as follows:

> "The jurisdiction * * * depends, in cases of contract, upon the nature of the contract, and is limited to contracts, claims and services purely maritime, and touching rights and duties appertaining to commerce and navigation."
>
> *The Eclipse*, 135 U. S. 599, 608.

See also:

> *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52.

The rule as to the subject-matter being the test is plain enough. But some cases (relied on by libelant) seem to indicate that it does not apply to ship railways, or rather that such structures are maritime in purpose, and that therefore contracts con-

cerning them are with admiralty. But a mere incidental connection with shipping does not make a subject of maritime.

In accepting subject-matter as the test, it must be applied guardedly. The reaction against the old criterion of location was so sharp that certain judges in applying the subject-matter test, applied it very carelessly, so as to include any contract which either nearly or *remotely* related to a ship or shipping, irrespective of whether or not the precise subject-matter of the contract was concerned with "navigation, business or commerce of the sea". In other words, these judges failed to clearly distinguish the *object* of the contract from the *subject-matter.* They were too eager to throw aside the doctrine of location in all cases, and this even despite the fact that the Supreme Court had refused to do away with it entirely as an aid in determining jurisdiction. For example: location is still retained as a factor in the rule of the Supreme Court that a ship-building contract and a contract for furnishing equipment and supplies to a new vessel are essentially and exclusively within the jurisdiction of the common law courts.

People's Ferry Co. v. Beers, 20 How. 393;
Roach v. Chapman, 22 How. 129;
The Winnebago, 205 U. S. 354.

A reference to the cases relied upon by libelant will serve to illustrate the manner in which the question has been dealt with and the failure in

certain instances properly to distinguish between the subject-matter and the object of a contract.

Wortman v. Griffith; The Vidal Sala.

Thus we have the case of *Wortman v. Griffith,* 30 Fed. Cases No. 18,057, decided in 1856, opinion by Justice Nelson, which is chiefly relied upon by libelant. To a certain extent that case shows the effect of the reaction above referred to and *seems* to hold that the use of a maritime railway is maritime because connected indirectly with shipping; properly understood, however, it does not so hold and is quite different from the present case and not applicable here.

Mr. Justice Nelson states that the nature of the contract or service and not the question whether the contract is made, or the service is rendered, on the land or on the water, is the proper test in determining whether admiralty has or has not jurisdiction. But in applying the rule to the facts he held that the subject-matter of the contract in that case was maritime. In doing so he was in part influenced by the reaction against the location doctrine, and in part justified by the particular fact of that case, which differed essentially from the case at bar.

In the Wortman case it appeared that the vessel had been hauled up, and held, on libelant's railway, while she was under repair "by other shipmasters". The only point passed on by the court was whether there was a proper distinction between the case

where the yard-owner makes repairs himself and that where they are made by others. That case, unlike the present case, involved *a contract for repairs* (made by the ship owner with another party), and the decision was simply that it was immaterial whether such contract for repairs was made with the yard-owner or with a third party. The decision says:

> "There can be no doubt that in cases where the shipmaster owning the ship yard and apparatus is employed to make the repairs, the service in question enters into and becomes part of the contract and is thus the appropriate subject of admiralty jurisdiction."

And

> "Although a distinction may be made between this case, in the aspect presented, and in the case where the shipmaster is employed to make the repairs, I am inclined to think that it is not a substantial one."

As stated in *The Vidal Sala* (12 Fed. 207):

> "The court upheld the jurisdiction and decided that the owner of the railway cradle could sue in the admiralty, although the repairs were made by other parties."

But in this case there was no contract for repairs, either with the yard-owner or "other parties". Nor was this really a case of a contract for service in connection with a marine railway as the Wortman case was considered to be. The contract here was essentially for the use of the ship yard and equipment as a whole, including as parts thereof a

machine shop and a marine railway; in fact it might well be said that the essential thing was the use of the machine shop for actually making the repairs and that the use of the railway was incidental to it. And both as to the machine-shop and as to the railway, the contract was only for the hiring thereof (so as to permit use by the shipowner himself) and not for the making of repairs or rendering of any service by another.

That a contract for such hiring, even of a marine railway, is not within the contemplation of the Wortman decision appears from the decision itself:

> "The doubt I have had in the case is upon the objection raised to the jurisdiction of the court. It is claimed by counsel for respondents that the agreement for the service rendered is to be regarded simply as a hiring of the yard and apparatus; and *certainly if this be the true character of the transaction there would be great difficulty in upholding the jurisdiction.*"

In other words Judge Nelson recognized in the Wortman case the true rule that the hiring of the ship yard and apparatus would not be within admiralty jurisdiction, but refused to apply it to that case inasmuch as the use of the yard there was not by way of hiring, but in connection with an actual contract for repairs—a state of facts which does not exist in the present case.

So far as the Wortman decision suggests that the use of the marine railway is in itself of a maritime nature and within admiralty jurisdiction, it is an

instance of the improper application of the proper test (that of subject-matter), by the confusion of the subject-matter of the contract with its object or purpose. The subject-matter of the contract was the marine railway, which is not maritime in nature or use; the object (to facilitate making of repairs to a vessel) was the only thing that could properly be considered maritime. In so far as the case seems to so suggest that the use of the railway for ship repairs is a maritime transaction Judge Nelson ignored his own decision of a few years previous in the case of *Ransom v. Mayo,* 20 Fed. case No. 11,571, wherein the syllabus is as follows:

> "Where a contract was made upon land, between the owner of a vessel and a shipbuilder for her repair by the latter in his shipyard on the land. Held neither the contract nor the service is maritime."

He also failed to consider other cases of the same import and effect as his own decision in the Ransom case, notably the following:

Bradley v. Bolles, 3 Fed. Cases No. 1773, wherein it was held that work done upon a vessel in a dry dock, in scraping her bottom preparatory to coppering her, was not of a maritime character.

Pritchard v. Lady Horatia, 19 Fed. Cases No. 11,438, wherein Judge Hopkinson, a noted admiralty jurist, held that where a contract for repairs was made on land, and the owners were represented on the spot by a consignee with funds, a plea to the jurisdiction of the court of admiralty must avail.

Also *Ransom v. Mayo,* 20 Fed. Cases No. 11,571 A, the decision in the District Court by Judge Betts, a learned admiralty jurist and author of Betts Admiralty Practice.

See also:

Boon v. The Hornet, 3 Fed. Cases No. 1640.

The same criticism applies to the case of *The Vidal Sala,* 12 Fed. 207, also relied upon by libelant. The decision was on the ground that libelant actually rendered services in the repair of a ship, while in dry dock. The contract there was clearly for services—docking and raising the steamer, and also clearing the dock of water and keeping it clear while the vessel was undergoing repairs.

The decision was also based on the ground that a dry dock is analagous to a wharf and to other docks, whether it be the slip-dock or the wet-dock where vessels are kept afloat at low water; and the court particularly pointed out that when a vessel enters a dry dock "she floats in, and when she leaves it she floats out". There is certainly nothing in this reasoning that applies to the case of a ship hauled up on a railway on land.

While these two cases—*Wortman v. Griffith* and *The Vidal Sala*—seem at first glance to uphold libelant's contention that there is something maritime about the use of a ship railway, it will be noted that when more carefully examined neither of them really does uphold it, and neither of them is similar to this case, or applicable here. On the other hand,

the other cases mentioned above—particularly *Ransom v. Mayo* (two decisions)—are strictly in point that a marine railway, on land, is not a subject-matter of admiralty jurisdiction.

We do not claim that admiralty may not have jurisdiction of claims for repairs made to a ship by a libelant, at least while the vessel is in the water. What we do claim is that admiralty has not jurisdiction of a suit on a contract for furnishing a marine railway, shipyard and equipment, though the object may be repairs to a ship by the shipowner. It is our contention that such is the nature of the present contract.

The Robert W. Parsons, 191 U. S. 17.

We have already discussed the testimony of the parties and shown that the contract in this case was one for the supply of a marine railway, shipyard and equipment; that the libelant was not required to and did not make any repairs, but that on the contrary, they were made by appellant.

We have also discussed the rule that subject-matter is the test of maritime jurisdiction and that subject-matter must not be confused with the object of the contract, as has been the case in some instances. We have also alluded to the fact that this court has not entirely done away with the old test of location.

We now proceed to a consideration of the case of *The Robert W. Parsons*, 191 U. S. 17 (wherein the doctrine of location was still recognized as a

factor), and to show that that case not only provides the nearest available approach to a solution of this problem, but also that it solves it in favor of the contention of appellant.

That case involved a contract for repairs to a ship in a dry dock, and it was there held that admiralty had jurisdiction. The court was divided, however, five to four, Chief Justice Fuller, Justices Brewer, Peckham and Harlan dissenting. The prevailing opinion (by Justice Brown) was upon the theory that repairs to the ship by libelant, though made while the ship was in dry dock, were nevertheless made on the water and not on land, that the dry dock was really a part of the sea.

In the course of the opinion, however, Justice Brown said:

> "for incidental repairs made on land to articles of a ship's furniture or machinery, it has never been supposed that a court of admiralty had jurisdiction." (191 U. S. 32.)
>
> "*Had the vessel been hauled up by ways upon the land and there repaired, a different question might have been presented,* as to which we express no opinion." (191 U. S. 34.)
>
> "There is no doubt of the proposition that a *dry dock itself* is not a subject of salvage service *or of admiralty jurisdiction*, because it is not used for the purpose of navigation. That was settled in Cope v. Vallette Dry Dock Co., 119 U. S. 625."

Thus at as late a date as 1903 we find the justices of this court divided five to four upon the question of extending admiralty jurisdiction to a case

involving repairs made by libelant to a vessel in dry dock, both the prevailing and dissenting opinions, however, demonstrating that the test of location is not to be entirely disregarded. But what is more to the point, in considering the facts of the present case, we find clear statements in the prevailing opinion itself that admiralty jurisdiction should not be extended to a case where repairs are made to a vessel which is hauled up by ways upon the land, and further that a dry dock itself is not a subject of admiralty jurisdiction. The discussion of the matter in the opinion shows beyond doubt that the reason for holding a dry dock to be within admiralty cannot apply to a marine railway, those reasons, as stated in the opinion, being simply that a harbor dock is an artificial basin constructed in connection with a harbor and used in loading and discharging cargoes, and that a dry dock differs only in being smaller and provided with machinery for pumping out the water. It is in concluding this discussion that Justice Brown says that repairs in a dry dock are not to be considered as made on land, and that if the vessel had been hauled up by ways upon the land and there repaired a different question would be presented.

It is upon the above opinion of Justice Brown, which is based upon reason and authority, that appellant contends that admiralty has no jurisdiction of the subject-matter of the present case. Either one or the other of the grounds stated is sufficient for our purposes, but the facts of the present case bring it within the operation of both.

In the first place the marine railway and shipyard of libelant was not, like a dry dock, in any sense a part of the sea. It was situate wholly upon the land, and the vessel was *"hauled up by ways upon the land* and there repaired". In this regard the attention of the court is called to the photo plate of the "Yucatan" while she was undergoing repairs (Tr. p. 133). If, therefore, repairs to the machinery of a vessel, that is, its engine, boilers, shaft, etc., made on land, "have never been supposed to be subject to admiralty jurisdiction", it is no more proper to give admiralty jurisdiction, where the vessel itself is hauled up on the land and repairs are there made either to the machinery or to the decks, masts, or other stationary parts of the vessel. In each case the contract is one wholly performed on land, and though having ultimate relation to navigation, it is not directly connected with navigation, business or commerce of the sea. We claim there is no distinction between the two cases.

In the second place, in this case (unlike the Parsons) the subject-matter was the railway *itself*, and if "a *dry dock* is not a subject of salvage service *or of admiralty jurisdiction*", even though held to be a part of the sea, *far less so is a marine railway* and shipyard, situate wholly upon the land. Both, it is true, are used for the repair of ships (that is their object); but neither can be "used for the purpose of navigation". The railway was the exclusive subject-matter here. Libelant was

under no duty, by contract or otherwise, to make repairs, or to perform any service whatsoever except to supply its marine railway, shipyard and equipment. Libelant was entitled to payments for the use of the railway and yards, regardless of whether or not appellant made any repairs at all. The subject-matter of the contract was the supplying of the plant; and that subject-matter is certainly not within admiralty jurisdiction, under the above opinion.

The court will bear in mind that the claim in this case is solely for charges claimed to be due for overtime for the *use and occupation* by appellant of libelant's marine railway and shipyard. That is the subject-matter, and if subject-matter is to be the test of jurisdiction, under the foregoing authorities cited, admiralty is without jurisdiction in this case. No other conclusion is justified.

ADMIRALTY CANNOT TAKE JURISDICTION OF ANY SEPARATE PORTION OF THIS CONTRACT.

And it might be argued that the libel here was proper because some *portion* of the contract was maritime. However, for admiralty jurisdiction the contract must be maritime as a whole; and even if this were not so the contract here could not be severed inasmuch as the libel was brought on the contract as an entirety; furthermore, if there could be any such segregation of items there would be no jurisdiction in admiralty inasmuch as the only

items in dispute—for overtime rent—are not maritime at all.

Even were there any maritime element in the contract here involved, and we claim that there was not, nevertheless, to give admiralty jurisdiction, the contract must be maritime in *all* its elements. This is the rule laid down by Justice Story in *Plummer v. Webb*, 19 Fed. Cases No. 11,233, as follows:

> "In order that a contract be cognizable in admiralty it must be maritime in all its elements; the substance of the whole contract must be maritime; in cases of a mixed nature, it is not sufficient that there are involved some ingredients of a maritime nature; jurisdiction of those cases belongs to the common law courts."

To the same effect:

> "Where a party seeks the aid of a court of admiralty to enforce a special contract, the entire contract must be essentially maritime in its qualities and attributes. It is not sufficient ground for admiralty jurisdiction that the contract involves some elements of a maritime nature. The substance of the whole contract must be maritime. And a maritime privilege or lien, imparting, as it does, a tacit hypothecation of the subject of it, is a strict right and cannot be extended by construction, analogy, or inference."
>
> *The Vidal Sala*, 12 Fed. at 208.

It must be perfectly clear here that the contract is not maritime in all its elements, or in its essence. Appellant contracted for the use of libelant's various machine shop tools—mentioned in Ex-

hibit A and including lathes, drill-presses, etc.—constituting, apparently (and on the evidence) a complete machine shop. This part of the subject-matter was not maritime at all, unless made so by the fact that appellant intended to repair a ship; but such intention or purpose or object is not the test of admiralty jurisdiction.

But even if libelant had any right to segregate the items of the contract and proceed in admiralty as to some of them, it has not done so in this case. The libel (Tr. pp. 2-3) alleges the making of the contract called for the payment of $29,411.25, and that a balance of $2,533.45 remained unpaid. If libelant's contract for the $29,411.25 is not maritime (we contend it is not), jurisdiction of the libel based upon it would not be conferred by the fact that a different libel might have been filed alleging a different contract.

Finally if the items here could be segregated it would not help libelant in any way as the only items in controversy are not concerned at all with services, labor, material or use of machinery or tools in making repairs, but are solely for the use and occupation of the marine railway after the ship was placed upon it. In this respect the case is entirely different from *Wortman v. Griffith* as already pointed out. There libelant's claim was considered one for services in hauling up and holding up the ship, in connection with the work of another party under a contract for repairs; here the claim in dispute is not for services at all in

connection with the railway but for *"the use of same"*, and is not in connection with any contract for repairs by any one. Such a claim has no maritime elements at all.

See also:

Berton v. Dry Dock Co., 219 Fed. 763, 769.

THE ACT OF CONGRESS OF JUNE 23, 1910, DOES NOT CONFER ADMIRALTY JURISDICTION OVER THIS CASE.

In the District Court libelant made the argument that admiralty jurisdiction of this case was conferred by the Act of Congress of June 23, 1910. Aside from the fact that the Act does not purport to and in fact does not cover the case of repairs being made by the shipowner himself wholly upon the land, appellant contends that Congress is without authority to extend admiralty jurisdiction to any case not properly within admiralty jurisdiction as defined by this court.

The judicial branch of our Government is supreme in determining the extent of its admiralty and maritime jurisdiction, and Congress has no more power to extend it than a State legislature to restrict it. Admiralty jurisdiction is granted to the federal courts by the federal constitution, and it is for those courts to interpret and define its scope. Any attempt by Congress to overrule a decision of this court defining the limits of that jurisdiction is nugatory. For example, it is the

uniform holding of this court that a contract to build a ship is not maritime. Has Congress any power then to take jurisdiction of such a contract from the State courts and confer it upon the federal courts? Obviously not.

In referring to admiralty jurisdiction Mr. Chief Justice Taney, in *The Steamer St. Lawrence,* 1 Black 522, said:

> "Certainly no state law can enlarge it, nor can any act of Congress or rule of court make it broader than the judicial power may determine to be its true limits."

And again in *The Lottawanna,* 21 Wall. 558, 575, it is said:

> "The question as to the true limits of maritime law and admiralty jurisdiction is, undoubtedly, as Chief Justice Taney intimates, exclusively a judicial question, and no state law or act of Congress can make it broader, or (it may be added) narrower, than the judicial power may determine those limits to be."

Finally upon this point it is interesting to note the words of Judge Dooling (who decided the present case) in the case of *The Sinaloa,* 209 Fed. 287, 288, wherein he said, in denying a lien for services of a watchman:

> "The apparent intent of the act was to relieve those persons who formerly would have had a lien if credit had been given to the vessel from the necessity of alleging and proving that credit had been so given. The purpose does not seem to have been to create a new class of liens, or liens for services which had been theretofore determined not to be

> maritime, but only to deal with certain matters that had always been recognized as cognizable in admiralty."

It will be noted also that the statute in question provides only for the giving of a maritime *lien* to be enforced by a proceeding *in rem*. The present libel is not *in rem*, but was brought to procure a decree *in personam*. The statute does not undertake to give a shipyard owner the right to such a decree; in fact, Section 4 of the Act provides that it shall not be construed to affect the *existing* rules of law in regard to the right to proceed *in personam*.

IV.

Conclusion.

The contract involved in this case is one for nothing more or less than the use of a marine railway, shipyard and equipment. The testimony of the parties contained in the record forecloses any other construction. As such it does not relate to "navigation, business or commerce of the sea".

The subject-matter of a contract is the test for determining whether or not admiralty has jurisdiction. Subject-matter must not be confused with the object of a contract, nor must the old single test of location be entirely disregarded.

Under the subject-matter test as so limited, admiralty has no jurisdiction of the present case for two reasons, first because the repairs to the vessel were made wholly upon land in a shipyard

in no sense a part of the sea, and second, because the repairs were made solely by appellant, the libelant only furnishing the plant. In other words, the claim of libelant is merely for charges for the use and occupation of its marine railway and shipyard, a subject which under the decision in the *The Robert W. Parsons*, is not within the admiralty jurisdiction.

The Act of Congress of 1910 does not purport to give jurisdiction in this case. If such were its purpose the attempt would be nugatory.

An extension of admiralty jurisdiction to cases of the present nature would constitute an unwarranted invasion of the field of ordinary contracts and result in a denial to litigants of the right of trial by jury and other incidents of common law procedure which are jealously guarded by the federal constitution and the constitution of the several states.

It is respectfully submitted that the decree of the District Court must be reversed and the cause remanded with instructions to that court to vacate its decree and to dismiss the libel.

Dated, San Francisco,
March 28, 1918.

FRANK W. AITKEN,
H. W. GLENSOR,
ERNEST CLEWE,
AITKEN, GLENSOR & CLEWE,
Proctors for Appellant.

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Supreme Court of the United States

OCTOBER TERM 1916

No. [redacted]53

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,

vs.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY,
Appellee.

BRIEF FOR APPELLEE.

WARREN GREGORY,
ALLEN L. CHICKERING,
Proctors for Appellee.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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Supreme Court of the United States

OCTOBER TERM 1916

No. 745

NORTH PACIFIC STEAMSHIP COMPANY,
Appellant,

vs.

HALL BROTHERS MARINE RAILWAY AND SHIPBUILDING COMPANY,
Appellee.

BRIEF FOR APPELLEE.

I.

STATEMENT OF CASE.

Appellant seeks the judgment of this Court that the District Court of the United States was without jurisdiction to hear or determine the cause by reason of the fact that the subject matter was not maritime.

The argument for appellant is built upon an erroneous premise, viz., that this subject matter is the enforcement of an *oral* contract whereby appellee, a corporation, engaged in the business of

shipbuilding and repairing, was to lease or turn over to the appellant, a shipowner, the former's marine railway, shipyard, equipment, supplies and laborers for a period of time sufficient to enable the *appellant* to repair its vessel, the "Yucatan".

Counsel say in their brief (p. 11):

> "The subject matter of the contract was the shipyard, which appellant hired as a whole—including machine shop and marine railway—for the purpose of making repairs to its ship itself. Appellant did not bargain for making repairs or for the *results* of the use of the equipment, labor and materials supplied by libelant, but for the *use* thereof by itself. This appears both from the writing, Exhibit A, and from the oral testimony.
>
> The court will note that the memorandum was not the usual form of contract whereby a shipbuilding company agrees to repair a ship. It did not call for the performance by libelant of any service on or for a ship, either on water or land. *It called merely for the supply of a shipyard, nothing more.* That constituted its subject matter. In other words, appellant agreed to pay a stipulated price for the use of a shipyard and equipment, a subject matter having nothing to do with ships or shipping." (Last italics ours.)

And again (p. 12):

> "Exhibit A is not the contract itself; it is evidence of certain terms of the contract. It is in fact a schedule of charges for use of the marine railway, equipment, laborers, etc. It is absolutely silent as to who was to make repairs or what repairs were to be made; it contains none of the usual provisions of a complete contract even for the use of a yard."

The facts of the case, as shown clearly by the record, do not necessitate any prolonged discussion of the interesting question as to whether or not a lease of a marine railroad or shipyard, over which the lessee is to have full control and dominion for the repair of a vessel, is a maritime contract. The contract alleged and proved was not such an agreement. It seems sufficient to refer only to the pleadings to demonstrate this.

The original libel was filed on May 15, 1912 (fol. 10). This pleading did not contain as exhibits the various bills rendered, and so an amended libel was filed (fols. 11-15). In both these pleadings it was alleged, among other things (fol. 12):

> "That heretofore, to wit, in the month of May, 1911, the said American steamer 'Yucatan' then and there lying in the harbor of Winslow, state of Washington, stood in need of certain repairs and supplies to enable her to perform her voyages upon the Pacific Ocean and elsewhere, and the libelant herein on the 19th day of May, 1911, entered into a contract with the respondent herein, *to repair said American steamer*, a copy of which contract is hereto attached, marked 'Exhibit A' and made a part hereof."

The written contract, Exhibit A, is not, as counsel claim, unusual, and it does not contain any statement which would justify the conclusion that it was in fact a lease of the shipyard so that the shipowner could do his own repairing. Its initial sentence is (fol. 16):

> "Steamship 'Yucatan'.
>
> Dear Sir: Responsive to your personal request of this a. m. for *our* terms *for making*

> *repairs to the above vessel,* we beg to submit the following:" (Then follows a statement of the various items of charge which will be made.)

Concerning labor, it stated (p. 11):

> "For all necessary labor of all classes used in repairing the vessel and furnished by us, we agree to supply same at the actual rate of wages paid each man plus fifteen (15) per cent additional, payable Monday of each week. We shall require that you have a time-keeper to check up the time of labor and machines used with our time-keeper each day in order that no misunderstanding in this regard may occur."

This contract makes it clear that the only engagement of the parties was that the appellee, a corporation engaged in the business of making repairs to vessels, should make the repairs in this case upon a certain percentage basis for labor performed and materials furnished, including the hauling of the vessel onto the marine railway and the delivery of the vessel from her dock in Seattle to the plant. There is nothing in the nature of such a contract which can legitimately force the conclusion that the *owner* was doing his own repairing or had control over the workmen. Certain bills attached as exhibits to the amended libel (pp. 28-29) show that Hall Brothers paid the foremen and the laborers. Other bills show that Hall Brothers also bought and paid for the materials. No charge was made in the nature of rental for the plant or the marine railway. If the contract had been,

indeed, one to hire or lease the yard together with the railroad, a lump sum would have been paid and the plant would have been used throughout the period of the lease or hiring without regard to the rate per hour or the division of the day into parts. The pivotal point is, from the side of the appellee, that it had at all times the control of the yard and the workmen.

To the amended libel an answer and cross-libel were filed. The answer admits the execution of the contract of May 19, 1911, stating (fol. 47):

> "Admits that, in May, 1911, respondent entered into a contract with libelant for the repairs of the Steamer 'Yucatan,' but denies that the alleged contract referred to in Article IV, and of which 'Exhibit A' therein referred to is a copy, is the whole contract entered into between libelant and respondent at said time, or on that behalf, but alleges that said 'Exhibit A' was only part of said contract and was intended to be a mere memorandum of the rates or amounts to be paid by respondent to libelant *for labor and services* to be performed during said repairs."

At folio 48 the covenants, stipulations and conditions, which it is claimed were not embodied in the written contract, are set out, and they are to the point that the appellee did not perform its services *within the time specified* and that all the labor, equipment, machinery and material available were not placed at the disposal of appellant. There was no claim that the owner was to do its own repairing nor any intimation that libelant had mistaken its

remedy by suing for maritime services and not for rental.

By its cross-libel appellant sought damages in the sum of $15,675 upon the alleged ground that the *appellee* had not completed the repairs in time and that by reason of such delay the appellant was unable to fulfill a charter of the vessel, which it had previously made with the Western Alaska Steamship Company. The fact concerning this delay was the only question at issue, and the case was tried upon that theory. The cross-libel, instead of alleging that the repairs were to be done by the appellant, is based upon the claim that the *appellee* had to do the repairs but did not do them expeditiously. It is alleged (fol. 51):

> "* * * * cross-respondent did not have a full and adequate equipment for the expeditious repairs of said steamer in its shipyard as agreed, *and did not use the inadequate equipment which it did have* for the exclusive use of cross-libelant, whereby said repairs were delayed for a further period of.....days."

If, as is now claimed, the engagement was that the shipowner should do his own repairs on a leased plant, then how can this be reconciled with the pleading of cross-libelant that it was damaged because libelant did not proceed with the work as speedily as agreed?

At the conclusion of this cross-libel (fol. 52) it is alleged:

> "That all and singular the premises are true and within the admiralty and maritime juris-

diction of the United States and of this Honorable Court."

To the extent, then, that parties may by any act confer jurisdiction upon a Court these parties have gone in the present case. Each sought in the same Court damages against the other. The case was finally decided in favor of appellee. Some time after the judgment was rendered, and after the time had expired within which appellee could seek relief in another jurisdiction, a motion to dismiss from the very jurisdiction that cross-libelant had chosen was filed by counsel substituted for those who had tried the case.

The evidence in the case was entirely devoted to the question of alleged delay in the finishing of the repairs. In the brief for appellant some extracts from this testimony are given on pages 5-8, but these extracts must be read in connection with the other testimony, it being evident that none of the parties or their counsel at that time had any notion but that the repairs had been done by the appellee. It is apparently upon these random extracts from the testimony that counsel place their chief reliance.

The issue as to jurisdiction must be finally determined by the judgment of the Court as to what is the subject matter of the cause. That subject matter must be found in the agreement sued upon. If this agreement is in writing, then it alone may be considered. If it be oral, and there is conflicting testimony concerning its terms, then the con-

clusions of the trial Court are final. The engagement herein sued upon was in writing. The trial Court found that the subject matter was within the jurisdiction of the Court. The most favorable showing for appellant is that there was presented to the trial Court a conflict of evidence, by which the admitted written contract sued upon stated that the yardowner was to do the repairs, and the testimony of certain witnesses showed that in their understanding of the contract the shipowner was to do the repairs. It is as if plaintiff should sue in the United States District Court to recover upon a promissory note in the principal sum of $2000, and at the trial a witness should testify that in his opinion the principal sum was $1500, and thereupon the defendant should move to dismiss the case upon the ground that the Court had no jurisdiction.

Even assuming that fragments of the testimony may be considered for the purpose of overthrowing the subject matter of the cause as shown by the pleadings, yet they do not bear out the claim that the control of the work was turned over to the shipowner.

It is said in the brief (p. 2):

> "This schedule (Exhibit A) is not the contract. It is a memorandum only of the rates to be charged. The contract itself rested in parol (p. 78, f. 66; p. 100, f. 97)."

Turning to these references we find on page 78 the following:

"Why, the thing was discussed between Mr. Doe and myself orally in our office I think in the forenoon, and then I agreed to embody the terms of this oral understanding in writing and he would come in the next morning and look it over and sign it if it was satisfactory. That afternoon I wrote up this letter—that is my remembrance of it—and he came in the next morning, in company with Mr. Cave, the gentleman sitting there, and we went over the ground again, practically the same as Mr. Doe and I had together, *and at the termination of that interview Mr. Doe signed the letter in question here and I signed it.*"

The other portion of the record referred to, viz., page 100, folio 97, deals with the conversation between the agents of the parties on May 18, 1911. It is apparently this oral contract upon which appellant bases its jurisdictional point. It seems only necessary to state that the conversation took place on May 18th and the written contract was signed on the following day. It, of course, being in writing, superseded all the prior verbal negotiations between the parties and is the only evidence to which the Court may look to determine such understanding.

It is submitted, therefore, that the engagement of the parties, which was the subject matter of the consideration of the Court below, was not a lease or a like agreement for a shipyard. It was very distinctly not such an agreement, and the pleadings and proceedings at the trial are persuasive that neither of the parties proceeded upon any such theory.

II.

BRIEF OF ARGUMENT.

Admiralty has always been held to have jurisdiction of claims for repairs, supplies and materials for a ship.

The Jefferson, 215 U. S. 130, page 142;
The New Jersey, 1 Pet. Adm. 223, page 227;
The Sandwich, 1 Pet. Adm. 233;
The Jerusalem, 2 Gall. 345;
The President, 4 Wash. C. C. 453;
The Robert Fulton, Paine, 620;
The Thomas Scattergood, Gilp. 1;
A New Brig, Gilp. 473;
Davis v. Child, 2 Ware, 7;
The Elecktron, 48 Fed. 689.

(The last case was a libel for breach of contract to furnish supplies.)

We do not dispute the doctrine dwelt upon at some length by opposing counsel that jurisdiction in admiralty depends on the subject matter and not on the ultimate object or purpose of the contract. Argument on this point is foreclosed by the decision of this Court in *Insurance Co. v. Dunham,* 11 Wall. 1, and by the decision of Judge Story in *The Jerusalem,* Fed. Cas. No. 7294, where it was said:

> "The true doctrine was always asserted by the learned judges of the admiralty, and has been recently recognized by Mr. Justice Buller; that the jurisdiction as to contracts depends not upon the locality, but upon the subject matter, of the contract."

In *Dailey v. City of New York,* 128 Fed. 796, the Court said:

> "Jurisdiction is sustainable upon the ground, also, that a maritime duty was imposed upon the respondent by reason of the nature of the contracts, which related to a vessel and required her return to the owners. Jurisdiction attaches in case of a maritime contract, irrespective of the question whether it is to be performed on land or water."

In the present case a very considerable part of the work was done upon the vessel while she was still in the water. It was testified (fol. 71):

> "A. The vessel was brought to the yard; there was a large amount of work to be done in renewing decks that had been destroyed when the vessel was wrecked. She was submerged, as I understand, for a long time, and the ice floes had torn all the upper decks off; those decks had to be renewed. The work was started at Heffernan's; some of the material was on hand and was on board the vessel when she was brought over. We took up that work and put in the beams and laid the deck and did the deck work; that continued on until later she was docked.
>
> Q. This work you speak of now was done on her as she lay alongside your dock?
>
> A. Yes, sir.
>
> Q. Before she was taken out of the water?
>
> A. Yes, sir."

Since, then, the admiralty jurisdiction is clearly recognized in cases of repairs to vessels, and since the record here shows that the subject matter of the litigation is a contract for the repair of the vessel, the objection to the jurisdiction of the

admiralty court would seem to disappear; and it matters not whether these repairs were done while the vessel was in the water or on the railway.

The Robert W. Parsons, 191 U. S. 17, at page 33.

Counsel have probably developed their whole theory of this want of jurisdiction from the sentence quoted from the opinion in this case, viz.:

> "Had the vessel been hauled up by ways upon the land and there repaired, a different question might have been presented, as to which we express no opinion."

At best this cannot be said to be a final statement of the Court that if the repairs had been done upon a maritime railroad the Court would have had no jurisdiction.

A more recent decision of this Court was rendered in the case of *The Jefferson,* 215 U. S. 130. The Court there dealt with the question of salvage for a vessel when damaged while in a dry dock. The jurisdiction of the admiralty court was sustained upon the broad theory that:

> "The status of a vessel is not altered merely because in the one case the water is confined within the dock by means of gates closed when the tide begins to ebb, while in the other the water is removed and the gates are closed to prevent the inflow of the water during the work of repair."

And:

> "In reason we think it cannot be held that a ship or vessel employed in navigation and com-

> merce is any the less a maritime subject within the admiralty jurisdiction when, for the purpose of making necessary repairs to fit her for continuance in navigation, she is placed in a dry dock and the water removed from about her, than would be such a vessel if fastened to a wharf in a dry harbor, where, by the natural recession of the water by the ebbing of the tide, she for a time might be upon dry land."

Since the decision in *The Jefferson* case, we submit that it would now be held, if necessary, that the query of Mr. Justice Brown in the *Parsons* case would be answered by giving the admiralty courts jurisdiction although the vessel were upon a marine railroad and completely out of the water while repairs were being made. If the repairs in question here were done by the appellee, then the argument for appellant must fall, because, as already noted, its argument proceeds upon the premise that the work was done by the shipowner.

We should not like, however, to admit that even though the work were done by the shipowner the admiralty Court would have no jurisdiction. The precise question was decided adversely to appellant's contention in *Wortman v. Griffith et al.*, 3 Blatch. 528; Fed. Cas. 18,057. The following cases are in accord with the decision in the Wortman case:

The Vidal Sala, 12 Fed. Rep. 207;
The Scotia, 35 Fed. 916, at p. 917;
The George T. Kemp, 2 Lowell, 477.

From the foregoing authorities, it seems settled that if the repairs were done by the yardowner it

makes no difference whether the ship was in the water or upon land; that the weight of authority is to the same effect although the repairs are done by the owner of the vessel. No substantial difference has been suggested between a vessel which is in a dry dock and a vessel which is hauled up on the land by a marine railroad into a shipyard and there undergoes repairs. There seems little, if any, difference in principle, as to whether the location is a dry dock or a marine railway, since both are structures used for the purpose of getting the vessel out of the water for the purpose of repair. The Congress of the United States evidently had this same situation in mind when it passed the Act of June 23, 1910, where it is stated: "Any person furnishing repairs, supplies or other necessaries, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic" etc. This Act is not cited for the purpose of claiming that Congress may make maritime those things which are not maritime or to override a decision of this Court on that question. It is, however, pertinent as showing the legislative definition of a marine railway. It is well known that prior to the passage of the Act of 1910 the question of some remedy for defects in the law regarding liens on domestic vessels had been very widely discussed. The use of marine railways, we take it, is comparatively recent, and no doubt Congress had in mind the query raised by the quotation from the opinion of Mr. Justice Brown in the Parsons case, when it *ex industria*

gave a maritime lien for repairs furnished while a vessel was using a "dry dock or marine railway".

It is urged that admiralty cannot take jurisdiction of any separate portion of a contract and that the contract must be maritime as a whole. This proceeds upon the theory already expressed of appellant that this contract was in the nature of a lease of the entire shipyard and that the repairs were done by the shipowner. Even in such a case, however, the authorities cited by counsel to the effect that the contract must be maritime in all its elements does not apply to the present case. Whatever the nature of the contract, it is evident that specific charges were to be made and were made for each of the services performed: towage, labor, materials, etc. In such a case the contract was undoubtedly severable, and even if certain of the elements of charges were not subject to maritime jurisdiction, nevertheless the others would be. It was held in *Pacific Coast S. S. Co. v. Ferguson*, decided by the Circuit Court of Appeals for the Ninth Circuit, 76 Fed. 993, that

> "The contract, as far as it pertained to the transportation, was purely a maritime contract, and enforceable in the admiralty. So far as it pertained to the railroad charges, it was not maritime, and the admiralty court is without jurisdiction to entertain it."

And in this case the Court retained jurisdiction over those charges which were so held to be maritime in their nature. The rule appears to be that if the contract is entire and not severable or apportion-

able as to charges, then it might not be of a maritime nature if it contained charges which were not maritime. But where the charges are apportionable, suit can be brought in admiralty on that portion of the contract which is maritime in its nature. In the present case the various items of charge are clearly set forth in the bills attached as exhibits to the libel.

III.

SUMMARY.

1. This Court has undoubted jurisdiction if the repairs were to be done by the yardowner. The only source from which this fact may be determined by the Court is the contract itself. This contract distinctly states that the yardowner is to make such repairs, and such was the construction placed upon it by all the pleadings.

2. This appeal is upon the sole ground that the subject matter is not maritime. The only argument in that regard is based upon random extracts from the testimony of certain witnesses, which it is claimed show that the understanding of these witnesses was that the contract was really a lease of the shipyard. This contract is in writing and speaks for itself. It is an agreement for repairs to be done to the vessel by Hall Brothers. They complied with their contract—did the repairs and paid the men who had charge of the work. The Court below has determined that this was not any

sort of lease or other non-maritime engagement for the turning over of certain equipment and its management and control to the shipowner. This determination is conclusive upon this appeal.

3. Appellant has sought affirmative relief from the Court below by its cross-libel, in which it expressly alleges that the subject matter of the controversy is within the admiralty jurisdiction of the Court. Appellant is estopped from disputing the validity of its own averments.

4. Even though the repairs had been done by the shipowner, the admiralty court has jurisdiction because the subject matter of the contract was essentially maritime in character, and the only authorities which have passed upon the same state of facts have upheld the jurisdiction.

5. This appeal is without merit since its solution depends upon a very obvious question of fact, and the premise upon which the appeal is based is demonstrably opposed to the record.

It is respectfully submitted that the decree of the District Court should be affirmed and that damages should be imposed upon appellant for a frivolous appeal.

Dated, San Francisco,
April 12, 1918.

WARREN GREGORY,
ALLEN L. CHICKERING,
Proctors for Appellee.

NORTH PACIFIC STEAMSHIP COMPANY *v.* HALL BROTHERS MARINE RAILWAY & SHIPBUILDING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 53. Argued November 18, 19, 1918.—Decided March 3, 1919.

A contract for maritime service is within the admiralty jurisdiction, although not to be executed upon navigable waters. P. 125.

The place of performance—i. e., whether upon navigable waters or elsewhere—is but an evidentiary circumstance, to be considered in determining whether the contract is by nature maritime. *Id.*

A materialman furnishing supplies or repairs may proceed against the ship *in rem*, or against the master or owner *in personam*. 12th Admiralty Rule. P. 126.

While a contract for building a ship or supplying materials for her construction is not maritime, a contract for services, materials, and use of facilities, for the repair of a vessel already launched and devoted to maritime use, is a maritime contract; and in this respect it is immaterial whether the repairs are made while she is afloat, in dry dock or hauled out upon the land. P. 126. *The Robert W. Parsons*, 191 U. S. 17, limited.

The fact that the repairs are made under superintendence of the shipowner does not destroy the maritime nature of such a contract. P. 129.

For the purpose of repairing a vessel for a voyage, the owner of a shipyard, marine railway and machine shops, agreed to furnish materials and men to work under supervision of the shipowner, and to tow the vessel in and haul her out upon the land next the shops, as required in the repairs, by means of the railway, stated prices being exacted for labor, use of tug and scow, hauling out, use of railway, materials, etc. *Held*, an entire marine contract, for the repair of the vessel, not involving a lease, or agreement in the nature of a lease, of the railway and machine shops, the use of these being but incidental. P. 128.

Affirmed.

THE case is stated in the opinion.

Mr. Jackson H. Ralston, with whom *Mr. Frank W. Aitken*, *Mr. H. W. Glensor* and *Mr. Ernest Clewe* were on the brief, for appellant:

The contract involved in this case did not call for the performance by libelant of any service on or for a ship, either on water or land, but merely for the supply of a marine railway shipyard and equipment. Appellant did not bargain for making repairs or for the results of the use of the equipment, labor and materials supplied by libelant, but for the use thereof by itself. The testimony of the parties forecloses any other construction. Such a contract does not relate to "navigation, business or commerce of the sea."

The subject-matter of a contract is the test for determining whether or not admiralty has jurisdiction. Subject-matter must not be confused with the object of a contract, *Leland* v. *Ship Medora*, 15 Fed. Cas. No. 8237; *The Paola R*, 32 Fed. Rep. 174; *De Lovio* v. *Boit*, 7 Fed. Cas. No. 3776; *Insurance Co.* v. *Dunham*, 11 Wall. 1, 26; *The Eclipse*, 135 U. S. 599, 608; *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52; nor must the old single test of location be entirely disregarded, *The Robert W. Parsons*, 191 U. S. 17;

Ransom v. *Mayo*, Fed. Cas. Nos. 11571, 11571A; *Bradley* v. *Bolles*, Fed. Cas. No. 1773; *Pritchard* v. *Lady Horatia*, Fed. Cas. No. 11438; *Boon* v. *The Hornet*, Fed. Cas. No. 1640. *Wortman* v. *Griffith*, Fed. Cas. No. 18057, and *The Vidal Sala*, 12 Fed. Rep. 207, distinguished.

Under the subject-matter test as so limited, admiralty has no jurisdiction of the present case for two reasons, first, because the repairs to the vessel were made wholly upon land in a shipyard in no sense a part of the sea, and second, because the repairs were made solely by appellant, the libelant only furnishing the plant. In other words, the claim of libelant is merely for charges for the use and occupation of its marine railway and shipyard, a subject which under the decision in the *The Robert W. Parsons*, is not within the admiralty jurisdiction. See also *Berton* v. *Dry Dock Co.*, 219 Fed. Rep. 763, 769. For admiralty jurisdiction the contract must be maritime as a whole; and, even if this were not so, the contract here could not be severed, inasmuch as the libel was brought on the contract as an entirety. Furthermore, if there could be any such segregation of items, there would be no jurisdiction in admiralty inasmuch as the only items in dispute—for overtime rent—are not maritime at all. To give admiralty jurisdiction, the contract must be maritime in all its elements. *Plummer* v. *Webb*, Fed. Cas. No. 11233; *The Vidal Sala*, 12 Fed. Rep. 207, 208.

The Act of Congress of 1910 does not purport to give jurisdiction in this case. If such were its purpose the attempt would be nugatory. *The St. Lawrence*, 1 Black, 522; *The Lottawanna*, 21 Wall. 558, 575; *The Sinaloa*, 209 Fed. Rep. 287, 288.

An extension of admiralty jurisdiction to cases like this would constitute an unwarranted invasion of the field of ordinary contracts and result in a denial to litigants of the right of trial by jury and other incidents of common-law procedure which are jealously guarded by

the Federal Constitution and the constitutions of the several States.

Mr. Warren Gregory and *Mr. Allen L. Chickering*, for appellee, submitted.

MR. JUSTICE PITNEY delivered the opinion of the court.

This is a direct appeal under § 238, Judicial Code (Act of March 3, 1911, c. 231, 36 Stat. 1087, 1157), involving only the question whether the cause was within the admiralty jurisdiction of a District Court of the United States.

Both parties are corporations of the State of California. Appellee, which for convenience may be referred to as the "Shipbuilding Company," filed its libel *in personam* against appellant, which we may call the "Steamship Company," to recover a balance claimed to be due for certain work and labor done, services rendered, and materials furnished in and about the repairing of the steamship *Yucatan*. The Steamship Company filed an answer denying material averments of the libel, and a cross-libel setting up a claim for damages for delay in the making of the repairs. The cause having been heard upon the pleadings and proofs, there was a decree for a recovery in favor of the Shipbuilding Company and a dismissal of the cross-libel. After this the Steamship Company filed a motion to arrest and vacate the decree and to dismiss the cause for want of jurisdiction. The motion was submitted to the court upon the pleadings, the proofs taken upon the hearings of the merits, and some slight additional proof. It was denied, and the present appeal followed.

The facts were these: In the month of May, 1911, the Steamship Company was the owner of the American steamer *Yucatan*, which then lay moored or tied up at

dock upon the waters of Puget Sound at Seattle, in the State of Washington. The vessel, which was of steel construction, was in need of extensive repairs. She had been wrecked, and had remained submerged for a long time; ice floes had torn away the upper decks, and some of her bottom plates also needed to be replaced. She was under charter for an Alaskan voyage, to be commenced as soon as the repairs could be completed. The Shipbuilding Company was the owner of a shipyard, marine railway, machine shops, and other equipment for building and repairing ships, situate upon and adjacent to the navigable waters of Puget Sound at Winslow, in the same State, and had in its employ numerous mechanics and laborers. Under these circumstances it was agreed between the parties that the Shipbuilding Company should tow the vessel from where she lay to the shipyard, haul her out as required upon the marine railway to a position on dry land adjacent to the machine shop—the place being known as the "dry dock," and the hauling out being described as "docking"—and should furnish mechanics, laborers, and foremen as needed, who were to work with other men already in the employ of the Steamship Company, and under its superintendence; and the Shipbuilding Company was also to furnish plates and other materials needed in the repairs, and the use of air compressors, steam hammers, riveters, boring machines, lathes, blacksmith forge, and the usual and necessary tools for the use of such machines. At the time the contract was made, another vessel (the *Archer*) was upon the dry dock, and it was uncertain how soon she could be returned to the water. It was understood that the *Yucatan* should be hauled out as soon as the *Archer* came off, should remain upon the dry dock only during such part of the work as required her to be in that position, and at other times should lie in the water alongside the plant. For the services to be performed and the materials and equipment

to be furnished the Shipbuilding Company was to receive stated prices, thus: for labor of all classes, the actual rate of wages paid to the men plus 15 per cent.; for use of tug and scow, a stated sum per hour; for hauling out the vessel and the use of the marine railway, a stated sum for the first 24 hours, and a specified rate per day for 6 "lay days" immediately following the hauling out; for each working day thereafter, another rate; for vessel lying alongside the dock for repairs, no charge; for the running of air compressors, a certain charge per hour; for the use and operation of other machines, certain rates specified; and for materials supplied, invoice prices and cost of freight to plant, with 10 per cent. additional.

The vessel was docked and repaired in the manner contemplated by the agreement; she was brought to the shipyard on the 27th of May, and lay in the water alongside of the dock there until the 17th of June, during which time upper decks and beams were put in and other work of a character that could be done as well while she was afloat as in the dry dock. On June 17 she was hauled out and remained in dry dock for about two weeks while her bottom plates were renewed. During the same period the propeller was removed to permit of an examination of the tail shaft, and as the shaft showed deterioration a new one was ordered to be supplied by a concern in San Francisco. Upon completion of the work upon the bottom plates, and on the 5th of July, the vessel was returned to the water and lay there for about two weeks awaiting arrival of the new tail shaft. When this arrived the vessel was again hauled out, the tail shaft and propeller were fitted, and the remaining repairs completed. Libelant's claim was for work and labor performed, services rendered, and materials furnished under the circumstances mentioned, and was based upon the agreed scale of compensation.

The question in dispute is whether a claim thus grounded

is the subject of admiralty jurisdiction; appellant's contention being that the contract, or at least an essential part of it, was for the use by appellant of libelant's marine railway, shipyard, equipment, and laborers in such manner as appellant might choose to employ them, and that it called for the performance of no maritime service by libelant.

The Constitution, Art. III, § 2, extends the judicial power of the United States to "all cases of admiralty and maritime jurisdiction"; and the legislation enacted by Congress for carrying the power into execution has been equally extensive. Act of September 24, 1789, c. 20, § 9, 1 Stat. 73, 77; Rev. Stats., § 563 (8); Judicial Code, § 24 (3), 36 Stat. 1087, 1091, c. 231. In defining the bounds of the civil jurisdiction, this court from an early day has rejected those trammels that arose from the restrictive statutes and judicial prohibitions of England. *Waring* v. *Clarke*, 5 How. 441, 457–459; *Insurance Co.* v. *Dunham*, 11 Wall. 1, 24; *The Lottawanna*, 21 Wall. 558, 576.

It must be taken to be the settled law of this court that while the civil jurisdiction of the admiralty in matters of tort depends upon locality—whether the act was committed upon navigable waters—in matter of contract it depends upon the subject-matter—the nature and character of the contract; and that the English rule, which conceded jurisdiction, with a few exceptions, only to contracts made and to be executed upon the navigable waters, is inadmissible, the true criterion being the nature of the contract, as to whether it have reference to maritime service or maritime transactions. *People's Ferry Co.* v. *Beers*, 20 How. 393, 401; *Philadelphia, Wilmington & Baltimore R. R. Co.* v. *Philadelphia, &c. Steam Towboat Co.*, 23 How. 209, 215; *Insurance Co.* v. *Dunham*, 11 Wall. 1, 26; *The Eclipse*, 135 U. S. 599, 608.

In some of the earlier cases the influence of the English

rule may be discerned, in that the question whether a contract was to be performed upon the navigable waters was referred to as pertinent to the question whether the contract was of a maritime nature (*The Thomas Jefferson*, 10 Wheat. 428, 429; *The Planter* [*Peyroux* v. *Howard*], 7 Pet. 324, 341; *Steamboat Orleans* v. *Phœbus*, 11 Pet. 175, 183; *New Jersey Steam Navigation Co.* v. *Merchants' Bank*, 6 How. 344, 392); but a careful examination of the opinions shows that the place of performance was dealt with as an evidential circumstance bearing with more or less weight upon the fundamental question of the nature of the contract. If they go beyond this, they must be deemed to be overruled by *Insurance Co.* v. *Dunham*, *supra*.

Neither in jurisdiction nor in the method of procedure are our admiralty courts dependent alone upon the theory of implied hypothecation; it being established that in a civil cause of maritime origin involving a personal responsibility the libelant may proceed *in personam* if the respondent is within reach of process. *The General Smith*, 4 Wheat. 438, 443; *Manro* v. *Almeida*, 10 Wheat. 473, 486; *New Jersey Steam Navigation Co.* v. *Merchants' Bank*, 6 How. 344, 390; *Morewood* v. *Enequist*, 23 How. 491; *The Belfast*, 7 Wall. 624, 644; *The Kalorama*, 10 Wall. 204, 210; *The Sabine*, 101 U. S. 384, 386; *In re Louisville Underwriters*, 134 U. S. 488, 490; *Workman* v. *New York City*, 179 U. S. 552, 573; *Ex parte Indiana Transportation Co.*, 244 U. S. 456.

That a materialman furnishing supplies or repairs may proceed in admiralty either against the ship *in rem* or against the master or owner *in personam* is recognized by the 12th Rule in Admiralty, adopted in its present form in the year 1872 (13 Wall. xiv) after a long controversy that began with *The General Smith*, 4 Wheat. 438, and ended with *The Lottawanna*, 21 Wall. 558, 579, 581. See *The Glide*, 167 U. S. 606.

It is settled that a contract for building a ship or supply-

ing materials for her construction is not a maritime contract. *People's Ferry Co.* v. *Beers*, 20 How. 393; *Roach* v. *Chapman*, 22 How. 129; *Edwards* v. *Elliott*, 21 Wall. 532, 553, 557; *The Winnebago*, 205 U. S. 354, 363. In the case in 20 Howard the court said (p. 402): "So far from the contract being purely maritime, and touching rights and duties appertaining to navigation (on the ocean or elsewhere), it was a contract made on land, to be performed on land." But the true basis for the distinction between the construction and the repair of a ship, for purposes of the admiralty jurisdiction, is to be found in the fact that the structure does not become a ship, in the legal sense, until it is completed and launched. "A ship is born when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron—an ordinary piece of personal property—as distinctly a land structure as a house, and subject to mechanics' liens created by state law enforcible in the state courts. In the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction." *Tucker* v. *Alexandroff*, 183 U. S. 424, 438.

In *The Robert W. Parsons*, 191 U. S. 17, 33, 34, it was held that the admiralty jurisdiction extended to an action for repairs put upon a vessel while in dry dock; but the question whether this would apply to a vessel hauled up on land for repairs was reserved, the language of the court, by Mr. Justice Brown, being: "Had the vessel been hauled up by ways upon the land and there repaired, a different question might have been presented, as to which we express no opinion; but as all serious repairs upon the hulls of vessels are made in dry dock, the proposition that such repairs are made on land would practically deprive the admiralty courts of their largest and most important jurisdiction in connection with repairs."

In *The Steamship Jefferson*, 215 U. S. 130, it was held that the admiralty jurisdiction extends to a claim for salvage service rendered to a vessel while undergoing repairs in a dry dock.

What we have said sufficiently indicates the decision that should be reached in the case at bar. The contract as made contemplated the performance of services and the furnishing of the necessary materials for the repairs of the steamship *Yucatan*. It was an entire contract, intended to take the ship as she was and to discharge her only when completely repaired and fit for the Alaskan voyage. It did not contemplate, as is contended by appellant, either a lease, or a contract for use in the nature of a lease, of the libelant's marine railway and machine shop. The use of these was but incidental; the vessel being hauled out, when consistent with the progress of other work of the Shipbuilding Company, for the purpose of exposing the ship's bottom to permit of the removal and replacement of the broken plates and the examination of the propeller and tail shaft. In *The Planter* (*Peyroux* v. *Howard*), 7 Pet. 324, 327, 341, the vessel, requiring repairs below the water line as well as above, was to be and in fact was hauled up out of the water; and it was held that the contract for materials furnished and work performed in repairing her under these circumstances was a maritime contract. We think the same rule must be applied to the case before us; that the doubt intimated in *The Robert W. Parsons*, 191 U. S. 17, 33, 34, must be laid aside; and that there is no difference in character as to repairs made upon the hull of a vessel dependent upon whether they are made while she is afloat, while in dry dock, or while hauled up by ways upon land. The nature of the service is identical in the several cases, and the admiralty jurisdiction extends to all.

This is recognized by the Act of Congress of June 23, 1910, c. 373, 36 Stat. 604, which declares that "Any per-

son furnishing repairs, supplies, or other necessaries, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic," upon the order of a proper person, shall have a maritime lien upon the vessel.

The principle was recognized long ago by Mr. Justice Nelson in a case decided at the circuit, *Wortman* v. *Griffith* (1856), 3 Blatchf. 528, 30 Fed. Cas. No. 18,057, which was a libel *in personam* to recover compensation for services rendered in repairing a steamboat. Libelant was the owner of a shipyard with apparatus consisting of a railway cradle and other fixtures and implements used for the purpose of hauling vessels out of the water and sustaining them while being repaired. Certain rates of compensation were charged for hauling the vessel upon the ways, and a per diem charge for the time occupied while she was under repair, in cases where the owner of the yard and apparatus was not employed to do the work but the repairs were made by other shipmasters, as was done in that case. The owner of the yard and apparatus, together with his employees, superintended and conducted the operation of raising and lowering the vessel and also of fixing her upon the ways preparatory to the repairs, a service requiring skill and experience and essential to the process of repair. Mr. Justice Nelson held there was no substantial distinction between such a case and the case where the shipmaster was employed to make the repairs; and that the admiralty jurisdiction must be sustained.

Nor is the present case to be distinguished upon the ground that the repairs in which libelant was to furnish work and materials and the use of a marine railway and other equipment were to be done under the superintendence of the Steamship Company. This affected the quantum of the services and the extent of the responsibility, but not the essential character of the services or the nature of the contract, which, in our opinion, were maritime.

Decree affirmed.